Ì		
1	TEAGUE P. PATERSON, SBN 226659 VISHTASP M. SOROUSHIAN, SBN 278895	
2	BEESON, TAYER & BODINE, APC 483 Ninth Street, 2nd Floor	
3	Oakland, CA 94607-4051	
4	Facsimile: (510) 625-8275	
5	Email: vsoroushian@beesontayer.com	
6	Attorneys for Plaintiff	• .
7	AFSCME LOCAL 101	
8	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
9	COUNTY OF S	SANTA CLARA
10	SAN JOSÉ POLICE OFFICERS ASSOCIATION.	Case No. 1-12-CV-225926
[1	Plaintiff,	[Consolidated with Case Nos. 112CV225928, 112CV226570, 112CV226574, 112CV227864]
12	·	1126722677,, 1126722677,
13	V. CITY OF SAN JOSÉ, BOARD OF	PLAINTIFF AFSCME LOCAL 101'S SEPARATE STATEMENT OF DISPUTED
14	ADMINISTRATION FOR POLICE AND FIRE RETIREMENT PLAN OF CITY OF	FACTS IN SUPPORT OF OPPOSITION TO DEFENDANTS' AND CROSS-
15	SAN JOSÉ, and DOES 1-10 inclusive.,	COMPLAINANTS' MOTION FOR SUMMARY ADJUDICATION
16	Defendants.	
17	AND RELATED CROSS-COMPLAINT	Hearing Date: June 7, 2013 Hearing Time: 9:00 a.m.
18	AND CONSOLIDATED ACTIONS.	Courtroom: 2 Judge: Hon. Patricia Lucas
19		Complaint Filed: June 6, 2012 Trial Date: June 17, 2013
20		
21		
22		
23		
24		
25	·	
26		
27		
28		CASE NO. 1-12-CV-225926
	PLAINTIFF'S OPPOSITION TO DEFS.' SEP	ARATE STATEMENT OF UNDISPUTED FACTS
	ISO DEFS.' AND CROSS-COMPLAINANT	'S MOTION FOR SUMMARY ADJUDICATION

8

9

10 11

12

13

14 15

, ,

16 17

18

19

20

21 22

23

24

25

26

2728

A. <u>INTRODUCTION</u>

Plaintiff/Petitioner and Cross-Defendant Local 101 of the American Federation of State,
County and Municipal Employees ("AFSCME") submits the following Separate Statement of
Disputed Material Facts ("UDFs") in support of its Opposition to Defendants City of San José and
Debra Figone in her official capacity (collectively "City") Motion for Summary Adjudication.

B. CITY'S MATERIAL FACTS

Moving Party's Material

Facts and Supporting Evidence

maximum of 16%, but not more than

pension unfunded liabilities that may

exist due to Tier 2 benefits in the future. These contributions shall be in addition

50% of the costs to amortize any pension unfunded liabilities, except for any

Unconstitutional Impairment of Contract, California Constitution Article I, Section 9
 AFSCME first cause of action.

Issue No. 1 A: San José Charter §1506-A (Employee Additional Pension Contributions)

Opposing Party's Response and

Supporting Evidence

There are triable issues of material facts. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

ı			
	1.	Section 1506-A ("Current Employees") of Measure B states:	Undisputed
	(a)	"Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).	
	(b)	Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a	

CASE NO. 1-12-CV-225926

in Krim Referen Risklig	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	to employees' normal pension contributions and contributions towards retirec healthcare benefits.	
(c)	The starting date for an employee's compensation adjustment under this	
	Section shall be June 23, 2013, regardless of whether the VEP has been	
	implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to	
	all Current Employees.	
(d)	The compensation adjustment through additional employee contributions for	
	Current Employees shall be calculated separately for employees in the Police	
	and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.	
(e)	The compensation adjustment shall be	
	treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional	
	payments to be made on a pre-tax basis through payroll deductions pursuant to	
	applicable Internal Revenue Code Sections. The additional contributions	
	shall be subject to withdrawal, return and redeposit in the same manner as any	
	other employee contributions.	
	Supporting Evidence:	
	Defendant's Request for Individual Nation ("P.D.P.") Each	
	Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
2.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	Undisputed

	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence:	
	RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
3.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing). In relevant part, the section read:
	"Anything in Section 78a of the Charter to the contrary notwithstanding, the	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in
	Council in its discretion may at any time, or from time to time, by ordinance,	its discretion may at any time, or from time to time, by ordinance, amend or otherwise
	amend or otherwise change the retirement plan established by said	change the retirement plan established by said Section 78a or any retirement plan or
	Section 78a or any retirement plan or plans established pursuant to said	plans established pursuant to said Section 78a, or adopt or establish a new or different
	Section 78a, or adopt or established a new or different plan or plans for	plan or plans for eligible members of the police or fire department of the City of San
	eligible members of the police or fire department of the City of San José"	José, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or
	"all as the Council may deem proper and subject to such conditions, restrictions,	required by the provisions of said Section 89a" "all as the Council may deem
	limitations, terms and other provisions as the Council may deem proper;"	proper and subject to such conditions, restrictions, limitations, terms and other
		provisions as the Council may deem proper
	Supporting Evidence:	provided, however, that:
	RJN, Exh. E (California Assembly Concurrent Baseletian No. 17 advented in	(1) The Council <i>shall not decrease</i> any of said benefits below those which Section 78a
	Resolution No. 17, adopted in Assembly January 18, 1961,	makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights
	approving amendment of Charter of San José to include	to which he would be entitled under Section 78a"
	Section 78b ("Discretionary Powers of Council Respecting	(Emphasis added.)
	Retirement") of Article X).	Supporting Evidence:

	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		City's RJN, Exh. E (California Assemble Concurrent Resolution No. 17, adopted in the concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 17, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted in the california Assemble Concurrent Resolution No. 18, adopted No
		Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Pow of Council Respecting Retirement") of
···		Article X).
4.	The ballot argument in favor of Proposition A stated:	Disputed as incomplete (material terms missing The ballot argument in favor of Proposition A also says:
	"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE	"YOUR POLICE AN FIREMEN NEED
	CITY COUNCIL! It is good government to allow the City Council to	PROPOSITION A! Proposition A was placed the ballot by the City Council at the request of
	be responsible for investigating problems and deciding how to solve	members of your police and fire departments. purpose of this amendment is to enable the C Council to take legal steps to provide survivo.
	them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details	benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do
	up to your City Council. They have a staff to assist them including a very capable City Attorney."	have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
	 Supporting Evidence: RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of 	SURVIVOR BENEFITS ARE PROHIBITED PRESENT IN THE CITY CHARTER! In orato allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
	San José, April 12, 1960, including "Argument in Favor of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THE AMENDMENT!
	of Froposition A.	One reason is that the City Council should har broad powers to investigate and decide on ma
		just like this. A second reason is that the policemen and firemen have confidence that
		City Council will enact fair and reasonable provisions."
	•	(Emphasis added.)
		Supporting Evidence:
		 City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San Jo
		April 12, 1960, including "Argument in Favo CASE NO. 1-12-CV-22

	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		Proposition A").
5.	As adopted by the voters in 1965, the	Undisputed;
	San José City Charter states at Section 1500:	However, Title of Section 1500 reads: "Duty to Provide Retirement System."
	Except as hereinafter otherwise provided, the Council shall provide, by	Supporting Evidence:
	ordinance or ordinances, for the creation,	RJN, Exh. G (1965 Charter)
	establishment and maintenance of a	
	retirement plan or plans for all officers and employees of the City. Such plan or	
	plans need not be the same for all	
	officers and employees. Subject to other provisions of this Article, the Council	
	may at any time, or from time to time,	·
	amend or otherwise change any retirement plan or plans or adopt or	
	establish a new or different plan or plans	
	for all or any officers or employees."	
	Supporting Evidence:	
	• RJN, Exh. G (1965 Charter)	
	(emphasis added).	
6.		Disputed as incomplete
	1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added.)
	Charter, for the retirement of officers or	* It reads, in its entirety:
any but syst of C Mu		Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement
	but not limited to those retirement	of officers or employees of the City, adopted
		under any law or color of any law, including but
	M 1 10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	not limited to those retirement systems establish by Parts 1, 2 and 4 of Chapter 9 of Article 11 of t
	validated and declared legally effective	San Jose Municipal Code, are hereby confirmed
	provided by ordinance However,	validated and declared legally effective and shall continue until otherwise provided by ordinance.
	subject to other provisions of this	The foregoing provisions of this Section shall
	Article, the Council shall at all times have the power and right to repeal or	operate to supply such authorization as may be
	nave the power and right to repeat or	necessary to validate any such retirement systen

	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."	or systems which could have been supplied in the Charter of the City of San Jose or by the people the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and rig to repeal or amend any such retirement system is systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section. (Emphasis added.) Supporting Evidence: City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council." Supporting Evidence: • RJN, Exh. A.	Undisputed
8.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance." Supporting Evidence: RJN, Exh. A	Undisputed (although this is not the entirety of Section 602)
9.	City Charter section 1500 states: "Except as hereinafter otherwisc provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previou paragraph)
		6 CASE NO. 1-12-CV-2259

1 2	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	The second of th	Company of the Compan
4	Supporting Evidence:	
5	• RJN, Exh. A	
6 7	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, the City Council only amended the Municipal Code by way of ordinance to remove the SRBR.
8	Supporting Evidence:	Supporting Evidence:
9	Gurza Decl, Exhs. 54, 55	• Gurza Dec., Exhs. 54
10	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
11		
12	11. In 2010, a Coalition of City unions made a proposal to the City which	Objection: relevance and undue prejudice
13	stated:	Objections to Evidence 2-5
14	5.1.2. Additional Retirement Contribution.	Additional Supporting Evidence:
15		◆ Allen Dec., ¶15
16	Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement	
17	contributions in an amount equivalent to 10% of total	
18	compensation effective June 27,	
19	2010. The amounts so contributed will be applied to	
20	subsidize and thus reduce the prior service contributions that	
21	the City would otherwise be required to make. The parties	
22	specifically understand that this agreement neither alters nor	
23	conflicts with the City Charter Section 1505(c) because under	
	this agreement, employees will be subsidizing the City's	
24	Section 1505(c) required	
25	contribution.	
26	Supporting Evidence:	
27	• Gurza Dec.,¶ 16-19, Exh. 2.	
28		7 CASE NO. 1-12-CV-225926

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
 Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities. Supporting Evidence: Gurza Dec., ¶17, 18, Exhs. 3-6. 	Objection: relevance and unduc prejudice Objections to Evidence 2-5 Additional Supporting Evidence: Allen Dec., ¶15
 13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%. one time additional pension contribution): Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). Supporting Evidence: Gurza Dec., ¶ 6, 24, Exhs. 11, 	Objection: relevance and undue prejudice Objections to Evidence 11, 12 Additional Supporting Evidence: Allen Dec., ¶15

% www.	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
14.	For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction: Association of Building, Mechanical and Electric Inspectors (ABMEI) Association of Legal Professionals (ALP). Executive Management and Professional Employees (Unit 99), and other unrepresented employees.	Objection: relevance and undue prejudice Objections to Evidence 11, 13 Additional Supporting Evidence: Allen Dec., ¶15
	Supporting Evidence:	
	• Gurza Dec.,¶25, Exhs. 9, 13, 32, 33.	
15.	The 2010-2011 Agreement MOA between the City and ABA, states at Section 10.1.1:	Objection: relevance and undue prejudice Objections to Evidence 11, 14
	On-Going Additional Retirement	
	Contributions. Effective June 27, 2010, all employees who are members of the	·
	Federated City Employees' Retirement System will make additional retirement	
	contributions in the amount of 7.30% of	
	pensionable compensation, and the amounts so contributed will be applied	
	to reduce the contributions that the City would otherwise be required to make for	
	the pension unfunded liability, which is defined as all costs in both the regular	
	retirement fund and the cost-of-living	
	fund, except current service normal costs in those funds. This additional	
	employee retirement contribution would be in addition to the employee retirement	
	contribution rates that have been approved by the Federated City	
	Employees' Retirement System Board.	
	The intent of this additional retirement	

1	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
2	contribution rate by a commensurate	
3	7.30% of pensionable compensation, as illustrated below	
5	Commenter - Freiden oos	
6	Supporting Evidence: • Gurza Dec.,¶27, Exh, 11.	
7	. Guiza Beet, 211, Bhit, 111	
8	16. The 2010-2011 MOA between the City and AEA, also agreed to employees	Objection: relevance and undue prejudice
9	making an additional one time pension contribution "in the amount of 3.53% of	Objections to Evidence 11, 15
10	pensionable compensation, and the amounts so contributed will be applied	
11 12	to reduce the contributions that the City would otherwise be required to make during that time period for the pension	
	unfunded liability" (Section 10.1.2)	
13	·	
14	Supporting Evidence:	
15	• Gurza Dec.,¶28, Exh, 11.	
16	17. The 2010-2011 MOA between the City	
17	and AEA stated in connection with	Objection: relevance and unduc prejudice
18	employees paying additional pension contributions: "The parties understand	Objections to Evidence 11, 14
19	that in order to implement this provision, an amendment must be made	
20	to the Federated City Employees' Retirement System that requires an	
21	ordinance amending the San Jose Municipal Code." (Id. at Section	
22	10.1.4))	
23	Supporting Evidence:	
24	• Gurza Dec.,¶27, Exh, 11	
25	10 77 00 1 0010 0011	
26	18. The City's 2010-2011 agreements with the following unions stated in	Objection: relevance and undue prejudice
27	connection with employees paying additional pension contributions "The	Objections to Evidence 11, 15
28	parties understand that in order to implement this provision, an amendment	
20		10 CASE NO. 1-12-CV-225926
		IT OF UNDISPUTED FACTS ITION FOR SUMMARY ADJUDICATION

Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
must be made to the Federated Employees' Retirement System that requires an ordinance amending the San	
Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be	
made to the Police and Fire Department Retirement Plan that requires an	
ordinance amending the san Jose Municipal Code."	
 Association of Engineers and Architects (AEA) (plaintiff Mukhar is president). 	
Association of Maintenance Supervisory Personnel (AMSP)	
(plaintiff Dapp is president)City Association of Management	
Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332	
Electrical Workers, Local 332 (IBEW) International Union of Operating	
Engineers, Local No. 3 (representing plaintiffs in the Harris case)	
 San José Police Officers Association (plaintiff in the SJPOA case). 	
Supporting Evidence:	
• Gurza Dec.,¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
19. In 2011, the City reached agreements	Objection: relevance and undue prejudice
with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-	Objections to Evidence 11, 16
2012: • Association of Engineers and	
Architects (AEA) (plaintiff Mukhar is president),	
Association of Maintenance Supervisory Personnel (AMSP)	
(plaintiff Dapp is president) • City Association of Management	
SEPARATE STATEMEN	11 CASE NO. 1-12-CV-225

u min	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332	
	(IBEW)	
	• International Union of Operating Engineers, Local No. 3 (representing	
	 plaintiffs in the Harris case) San José Police Officers Association 	
	(plaintiff in the SJPOA case).International Association of	
	Firefighters, Local 230;	
	Supporting Evidence:	
	• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26,	
	28, 30, 31, 34.	
20.	In 2011, the City imposed a Last, Best	Undisputed, but for clarification purposes:
	and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.	• Effective September 18, 2011, CEO members
	20. 0.0 p	realized a 12.16% wage reduction
	Supporting Evidence:	• Effective June 26, 2011, MEF members realized a 12.01% wage reduction
	• Gurza Dec., ¶ 26, Exhs. 20, 28	
		Supporting Evidence:
21.	For Federated employees, the Municipal	Gurza Dec., Exhs. 20, 28 Undisputed
	Code provides: "Notwithstanding any other provisions of this Part 6 or of	Note: this section was added to the Municipal
	Chapter 3.44, members of this system shall make such additional retirement	Code around June 2010 and became effective Ju 2010
	contributions as may be required by	Supporting Evidence:
	resolution adopted by the city council or by executed agreement with a	• AFSCME RJN, Exh. F
	recognized bargaining unit." (Municipal Code 3.28.755)	
	,	
	Supporting Evidence:	

	Moving Party's Material Facts and Supporting Evidence	Opposing Party's Supporting I	
(Chapter 3.28).	the second	
22.	and Fire Plan employees.	Objection: relevance and a Objections to Evidence 24	-
	 Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by 		
	resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal		
	Code 3.36.1525(A).) • Police and Fire Plan employees		
	subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011		
	as may be required by executed agreement with a recognized bargaining		
	unit or binding order of arbitration." (Municipal Code 3.36.1525(B).)	·	
	Supporting Evidence: • RJN, Exh. D, (Municipal Code,	•	
	Chapter 3.36).		
		13	CASE NO. 1-12-CV-22:

1

10 11

12 13

14 15

16

17

18

19

20

21 22

23

24

25

2627

27

Opposing Party's Response and Supporting Evidence

23. San José Charter Section 1512-A states:

Moving Party's Undisputed Material

Facts and Supporting Evidence

"Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities." Undisputed

There are triable issues of material fact. Therefore, Defendants are not entitled to summary

Note: this section was added by Measure B

Supporting Evidence:

Contributions)

adjudication as a matter of law.

- RJN, Exh. B.
- 24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Undisputed

Supporting Evidence:

RJN, Exh. E (California
 Assembly Concurrent
 Resolution No. 17, adopted in
 Assembly January 18, 1961,
 approving amendment of
 Charter of San José to include
 Section 78b ("Discretionary
 Powers of Council Respecting
 Retirement") of Article X).

Disputed as incomplete (material terms missing):

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance,

25. Former San José Charter Section 78b

stated:

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time

CASE NO. 1-12-CV-225926

M	loving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	up to your City Council. They have a staff to assist them including a very capable City Attorney." Supporting Evidence:	Council to take legal steps to provide survivor benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do no have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
 RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor 	SURVIVOR BENEFITS ARE PROHIBITED A PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.	
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matter just like this. A second reason is that the policemen and firemen have confidence that the
		City Council will enact fair and reasonable provisions."
		(Emphasis addcd.)
		Supporting Evidence:
,		 City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San Jose April 12, 1960, including "Argument in Favor of Proposition A").
27.	As adopted by the voters in 1965, the	Undisputed
	San José City Charter states at Section 1500:	However, Title of Section 1500 reads: "Duty to Provide Retirement System."
	Except as hereinafter otherwise provided, the Council shall provide, by	Supporting Evidence:
	ordinance or ordinances, for the creation,	RJN, Exh. G (1965 Charter)
	establishment and maintenance of a retirement plan or plans for all officers	
and employees of the City. Such plan or plans need not be the same for all		
	officers and employees. Subject to other provisions of this Article, the Council	
	may at any time, or from time to time, amend or otherwise change any	
		16 CASE NO. 1-12-CV-225

Ŋ	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."	
	Supporting Evidence:	
	 RJN, Exh. G (1965 Charter) (emphasis added). 	
28.		Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or	(Emphasis added.)
	systems, existing upon adoption of this Charter, for the retirement of officers or	* It reads, in its entirety:
	employees of the City, adopted under	Any and all retirement system or systems, existing
	any law or color of any law, including but not limited to those retirement	upon adoption of this Charter, for the retirement of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including but not limited to those retirement systems establish
	Municipal Code, are hereby confirmed, validated and declared legally effective	by Parts 1, 2 and 4 of Chapter 9 of Article II of San Jose Municipal Code, are hereby confirmed
	and shall continue until otherwise provided by ordinance However,	validated and declared legally effective and shall
	subject to other provisions of this	continue until otherwise provided by ordinance. The foregoing provisions of this Section shall
	Article, the Council shall at all times have the power and right to repeal or	operate to supply such authorization as may be
	amend any such retirement system or	necessary to validate any such retirement system or systems which could have been supplied in the
	systems, and to adopt or establish a new or different plan or plans for all or any	Charter of the City of San Jose or by the people the City at the time of adoption or amendment of
	officers or employees, it being the intent	any such retirement system or systems. However
	that the foregoing sections of this Article shall prevail over the provisions of this	subject to other provisions of this Article, the Council shall at all times have the power and rig
	Section."	to repeal or amend any such retirement system
		systems, and to adopt or establish a new or different plan or plans for all or any officers or
	Supporting Evidence:	employees, it being the intent that the foregoing
	• RJN, Exh. G (1965 Charter).	sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added.)
		Supporting Evidence:

M	loving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		• City's RJN, Exh. G (1965 Charter)
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence: • RJN, Exh. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety of Section 602)
	Supporting Evidence: • RJN, Exh. A	
31.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
	Supporting Evidence: • RJN, Exh. A	
32.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, the City Council has only implement the elimination of the SRBR.
	Supporting Evidence:	Supporting Evidence: CASE NO. 1-12-CV-2259

	oving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	 Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	 Gurza Dec., Exhs. 54 Allen Dec., ¶21
s r	Municipal Code §3.28.385(C) provides: 'Contributions for other medical henefits shall be made by the City and the members in the ratio of one-to-one." Supporting Evidence: RJN, Exh. C.	Undisputed Note: this section was added to the Municipal Code around May 2011 Supporting Evidence: • AFSCME RJN G
) 2 1	Municipal Code §3.36.575(D) provides: 'Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: RJN, Exh. D.	Objection: relevance and undue prejudice Ohjections to Evidence 24
1	In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38.	Undisputed
	Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs. Association of Building, Mechanical	Disputed When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the following attendant circumstances: a guaranteed sala increase for the remaining year of the contract, a healthy economy, and the healt 19 CASE NO. 1-12-CV-2259

Opposing Party's Response and Moving Party's Undisputed Material Facts and Supporting Evidence Supporting Evidence 2 financial situation of the City. At the time, and Electrical Inspectors (ABMEI), 3 --Association of Engineers and AFSCME was unaware of the Architects, IFPTE Local 21 (AEA Units approximately 20% reduction in staffing and 41/42 and 43), drastic reductions to compensation (reduced -- Association of Maintenance pay, increased health benefit cost, etc.) that 5 Supervisory Personnel (AMSP), the City would affect in the future. The -- City Association of Management effect of these changes made a material Personnel (CAMP), --International Brotherhood of Electrical impact on the significance of the 2009 Workers, Local No. 332 (1BEW); agreement, and resulted in significantly -- Municipal Employees' Federation, greater costs by active employees under the 8 AFSCME Local 101 (MEF) 2009. At the time, AFSCME was unaware -- Confidential Employees Association, of the City's future plans to design Measure 9 AFSCME Local 101 (CEO); B and put it to the voters. As a result of --International Association of 10 these intervening events, the 2009 Firefighters, Local 230; -- San José Police Officers Association. agreement was never fully implemented by 11 the City and, indeed, key provisions have not been abandoned by the parties. It is 12 AFSCME's position that the parties are no Supporting Evidence: longer operating under the agreement, if 13 Gurza Dec. ¶39, Exhs. 21, 39, they ever were. 40, 41. 14 Supporting Evidence: 15 Allen Decl, ¶17; Doonan Decl. ¶ 78. The City's agreement with AEA stated: 16 Objection: relevance and undue prejudice The City and Employee Organization Objections to Evidence 18 17 agree to transition from the current Disputed: City's cited sourced do not support its partial pre-funding of retiree medical 18 and dental healthcare benefits (referred statement to as the "policy method") to prefunding 19 of the full Annual Required Contribution (ARC) for the retiree 20 healthcare plan ("Plan"). The transition shall be accomplished by phasing into 21 fully funding the ARC over a period of five (5) years beginning June 28, 2009. 22 The Plan's initial unfunded retiree healthcare liability shall be fully 23 amortized over a thirty year period so that it shall be paid by June 30, 2039 24 (closed amortization).The City and Plan members (active employees) shall 25 contribute to funding the ARC in the ratio currently provided under Section 26 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, 27 contributions for retiree medical henefits shall be made by the City and members 28

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.	
Supporting Evidence:	
• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.	
38. The AEA agreement further stated:	Objection: relevance and undue prejudice
The payments of the full ARC were to be phased in incrementally but: "[B]y	Objections to Evidence 19
the end of the five year phase-in, the City and plan members shall be	
Contributing the full Annual Required Contribution in the ratio currently	
provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."	
Supporting Evidence:	
 Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	
39. The provisions from the AEA agreement	Undisputed
on payments towards the full ARC is the same or substantially similar to the text	
in City agreements with the following unions:	
Association of Building, Mechanical	
and Electrical Inspectors (ABMEI), Association of Engineers and Architects,	
IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance	
Supervisory Personnel (AMSP), City Association of Management Personnel	
(CAMP), International Brotherhood of Electrical Workers, Local No. 332	
(1BEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association.	
COMPUGNICAL EMPLOYOUS ASSOCIATION	21 CASE NO. 1-12-CV

N	Noving Party's Undisputed Material Facts and Supporting Evidence	
	AFSCME Local 101 (CEO).	
•	Supporting Evidence:	
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
40.	The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.	Objection: relevance and undue prejudice Objections to Evidence 22, 23
	Supporting Evidence: • Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].	
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.	Objection: relevance and undue prejudice Objections to Evidence 20, 21
	Supporting Evidence:	
	• Gurza Dec., ¶43, Exh. 42, 43	

There are triable issues of material fact. Therefore, Defendants are not entitled to summary

Undisputed

Undisputed

adjudication as a matter of law.

states:

assets.

78b.

Moving Party's Undisputed Material

Facts and Supporting Evidence

Payments to Retirees") of Measure B

discontinued, and the assets returned to the appropriate retirement trust fund.

Any supplemental payments to retirees in addition to the benefits authorized

herein shall not be funded from plan

The Supplemental Retiree Benefit

42. Section 1511-A ("Supplemental

Reserve ("SRBR") shall be

Supporting Evidence:

Supporting Evidence:

RJN, Exh. B.

43. On or around April 12, 1960, the voters ratified Proposition A, which amended

the San José Charter to include Section

RJN, Exh. E (California Assembly Concurrent

approving amendment of

Resolution No. 17, adopted in Assembly January 18, 1961,

Charter of San José to include Section 78b ("Discretionary

Powers of Council Respecting Retirement") of Article X).

8

6

9

10 11

12 13

Į 4

15

16

17 18

19

20

21

22

23

24 25

26

2728

stated:

44. Former San José Charter Section 78b

Disputed as incomplete (material terms missing):

Opposing Party's Response and Supporting Evidence

"Anything in Section 78a of the Charter

CASE NO. 1-12-CV-225926

		•
1 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;" Supporting Evidence: RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or required by the provisions of said Section 89a" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that: (1) The Council shall not decrease any of said benefits below those which Section 78a makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a" (Emphasis added.) Supporting Evidence:
20 21 22 23		 City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).
24252627	45. The ballot argument in favor of Proposition A stated: "THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good	Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A also says: "YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on
28	government to allow the City Council to	the ballot by the City Council at the request of the CASE NO. 1-12-CV-225926

1 Opposing Party's Response and Moving Party's Undisputed Material Supporting Evidence Facts and Supporting Evidence 2 members of your police and fire departments. The be responsible for investigating 3 problems and deciding how to solve purpose of this amendment is to enable the City Council to take legal steps to provide survivor them. [¶] THIS AMENDMENT IS 4 benefits for your policemen's and firemen's SIMPLE! Leave all the technical details families. San Jose Policemen and Firemen do not up to your City Council. They have a 5 have Social Security or any other survivor staff to assist them including a very 6 benefits of any kind. Almost all other cities capable City Attorney." provide survivor benefits. 7 SURVIVOR BENEFITS ARE PROHIBITED AT **Supporting Evidence:** 8 PRESENT IN THE CITY CHARTER! In order RJN, Exh. F (Ballot Pamphlet to allow the City Council to adopt reasonable 9 for Charter Amendment survivor benefits, it is necessary to amend the Proposition A, to be submitted City Charter. In other words, this amendment 10 to the Electors of the City of merely unties the hands of your City Council. San José, April 12, 1960, 11 NO SPECIFIC PLAN IS PROPOSED IN THIS including "Argument in Favor AMENDMENT! 12 of Proposition A"). One reason is that the City Council should have 13 broad powers to investigate and decide on matters just like this. A second reason is that the 14 policemen and firemen have confidence that the City Council will enact fair and reasonable 15 provisions." 16 (Emphasis added.) 17 Supporting Evidence: City's RJN, Exh. F (Ballot Pamphlet for 18 Charter Amendment - Proposition A, to be 19 submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of 20 Proposition A"). 21 46. As adopted by the voters in 1965, the Undisputed; San José City Charter states at Section However, Title of Section 1500 reads: "Duty to 22 1500: Provide Retirement System." 23 Except as hereinafter otherwise Supporting Evidence: provided, the Council shall provide, by 24 ordinance or ordinances, for the creation, RJN, Exh. G (1965 Charter) establishment and maintenance of a 25 retirement plan or plans for all officers and employees of the City. Such plan or 26 plans need not be the same for all 27 officers and employees. Subject to other provisions of this Article, the Council 28

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or	
employees."	
Supporting Evidence:	·
 RJN, Exh. G (1965 Charter) (emphasis added). 	
47. As adopted by the voters in 1965, the	Disputed as incomplete
San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
Any and all retirement system or systems, existing upon adoption of this	(Emphasis added.)
Charter, for the retirement of officers or	* It reads, in its entirety:
employees of the City, adopted under any law or color of any law, including	Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement
but not limited to those retirement systems established by Parts 1, 2 and 4	of officers or employees of the City, adopted under any law or color of any law, including but
of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed,	not limited to those retirement systems established by Parts 1. 2 and 4 of Chapter 9 of Article II of the
validated and declared legally effective and shall continue until otherwise	San Jose Municipal Code, are hereby confirmed
provided by ordinance However,	validated and declared legally effective and shall continue until otherwise provided by ordinance.
subject to other provisions of this Article, the Council shall at all times	The foregoing provisions of this Section shall operate to supply such authorization as may be
have the power and right to repeal or amend any such retirement system or	necessary to validate any such retirement system or systems which could have been supplied in the
systems, and to adopt or establish a new or different plan or plans for all or any	Charter of the City of San Jose or by the people
officers or employees, it being the intent	the City at the time of adoption or amendment of any such retirement system or systems. However
that the foregoing sections of this Article shall prevail over the provisions of this	subject to other provisions of this Article, the Council shall at all times have the power and rig
Section."	to repeal or amend any such retirement system systems, and to adopt or establish a new or
Supporting Evidence:	different plan or plans for all or any officers or employees, it being the intent that the foregoing
• RJN, Exh. G (1965 Charter).	sections of this Article shall prevail over the provisions of this Section.

M	loving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		(Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The	Undisputed (although this is not the entirety of
	following acts of the Council shall be by ordinance: (a) Those acts required by	Section 602)
	specific provision of this Charter or by	
	ordinance."	
	Summering Fridances	·
	• RJN, Exh. A	
50 '	City Charter section 1500 states:	Objection: irrelevant; asked and answered
50,	"Except as hereinafter otherwise	(substance of Section 1500 addressed in
	provided, the Council shall provide, by ordinance or ordinances, for the creation,	previous paragraph)
	establishment and maintenance of a	
	retirement plan or plans for all officers and employees of the City."	
	Supporting Evidence:	
	RJN, Exh. A	
51.	The City Council has enacted some	Disputed: as is relevant to AFSMCE's case, t
	ordinances implementing Measure B.	City Council has only enacted the climination of the SRBR.
	Supporting Evidence:	Supporting Evidence:
	Gurza Decl, Exhs. 54, 55	• Gurza Dec., Exhs. 54

	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
52.	For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "It]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." Supporting Evidence: RJN, Exh. C.	Full text: "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." (Emphasis added.)
		Supporting Evidence:
		• City's RJN, Exh. C.
53.	Beginning in 2010, City Council	Disputed: cited sources only demonstrate
	resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.	suspended distributions in fiscal years 20 2011 (City RJN, Exh. L) and 2012-2013 (City R.IN, Exh. M)
	Supporting Evidence:	
	• RJN., Exhs. L, M, N	
5/1	For the Police and Fire Retirement	
٠+.	System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the	Objection: irrelevant and unduly prejudicial Objections to evidence 24
	methodology by the City Council, the Board shall make distributions in accordance with such methodology"	Objections to evidence 24
		28 CASE NO. 1-12-CV-225

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Supporting Evidence:	
• RJN., Exh. D.	
55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."	Objection: irrelevant and unduly prejudicial Objections to evidence 25
Supporting Evidence:	
• RJN., Exh. N.	
56. Beginning in 2010, the City Council amended the Municipal Code for the	Objection: irrelevant and unduly prejudicial
Police and Fire retirement plan to provide that "there shall be no distribution during	Objections to evidence 24
calendar years 2010, 2011, 2012 or during calendar year 2013"	
(Municipal Code section 3.36.580(D)(2)	
Supporting Evidence:	
• RJN., Exh. D.	
57. In 1986 when the City Council	Undisputed as to Federated City Employees
authorized the Federated SRBR, and in 2001, when the City Council authorized	Retirement System
the Police and Fire SRBR, the actuaries reported that the City's two pension	
retirement funds were fully funded.	
0 4 7 1	
Supporting Evidence:RJN, Exh. O [November 22,	
1985 Letter from Coates,	
Herfurth & England, to Edward F. Overton, Retirement and	
Benefits Administrator, re: SB650 Study]; Gurza Dec.,	
Exh 59 [Actuarial Valuation	
Report, City of San José Police and Fire Department Retirement	

n N	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]	
58.	In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	Undisputed as to Federated City Employees' Retirement System
	Supporting Evidence:	
	• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
59.	In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.	Undisputed as to Federated City Employees' Retirement System
	 Supporting Evidence: Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	
		30 CASE NO. 1-12-CV-225

2. <u>Unconstitutional Taking Of Private Property, California Constitution Article</u> 19, Section 9

AFSCME third cause of action

1

2

3

5

Issue 2A: San José Charter §1506-A (Employee Additional Pension Contributions)

There are triable issues of material facts. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

A	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1.	Section 1506-A ("Current Employees") of Measure B states:	Undisputed
(a)	"Current Employees" means employees of the City of San José as of the effective date of this Act and who are	
	not covered under the Tier 2 Plan (Section 8).	
(b)	Unless they voluntarily opt in to the	
	Voluntary Election Program ("VEP," described herein), Current Employees	
	shall have their compensation adjusted	
	through additional retirement contributions in increments of 4% of	
	pensionable pay per year, up to a maximum of 16%, but not more than	
	50% of the costs to amortize any pension	'
	unfunded liabilities, except for any pension unfunded liabilities that may	
	exist due to Tier 2 benefits in the future. These contributions shall be in addition	·
	to employees' normal pension contributions and contributions towards	
	retiree healthcare benefits.	
(c)	The starting date for an employee's compensation adjustment under this	
	Section shall be June 23, 2013, regardless of whether the VEP has been	
	implemented. If the VEP has not been	
	implemented or any reason, the compensation adjustments shall apply to	
	all Current Employees.	
(d)	The compensation adjustment through additional employee contributions for	

N	loving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.	-
(e)	The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions. Supporting Evidence: Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
2.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	Undisputed
	Supporting Evidence:	
	RJN, Exh. E (California Againshly Consument	
	Assembly Concurrent Resolution No. 17, adopted in	
	Assembly January 18, 1961, approving amendment of	•
	Charter of San José to include Section 78b ("Discretionary	
	Powers of Council Respecting Retirement") of Article X).	
	Retirement") of Article X).	

	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing):
"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;" Supporting Evidence: RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or required by the provisions of said Section 89a" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper provided, however, that: (1) The Council shall not decrease any of said benefits below those which Section 78a makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a" (Emphasis added.)	
	Supporting Evidence:	
	• City's RJN, Exh. E (California Assembly	
	Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to	
	include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
•	The ballot argument in favor of Proposition A stated:	Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition A als says:
	"THIS AMENDMENT GIVES	33 CASE NO. 1-12-CV-22592

1 Opposing Party's Response and Moving Party's Undisputed Material Facts and Supporting Evidence Supporting Evidence 2 DISCRETIONARY POWERS TO THE YOUR POLICE AN FIREMEN NEED 3 CITY COUNCIL! It is good PROPOSITION A! Proposition A was placed on government to allow the City Council to the ballot by the City Council at the request of the be responsible for investigating members of your police and fire departments. The problems and deciding how to solve 5 purpose of this amendment is to enable the City them. [¶] THIS AMENDMENT IS Council to take legal steps to provide survivor 6 SIMPLE! Leave all the technical details benefits for your policemen's and firemen's up to your City Council. They have a families. San Jose Policemen and Firemen do not 7 staff to assist them including a very have Social Security or any other survivor capable City Attorney." 8 benefits of any kind. Almost all other cities provide survivor benefits. 9 SURVIVOR BENEFITS ARE PROHIBITED AT Supporting Evidence: 10 PRESENT IN THE CITY CHARTER! In order RJN, Exh. F (Ballot Pamphlet to allow the City Council to adopt reasonable for Charter Amendment -11 survivor benefits, it is necessary to amend the Proposition A, to be submitted City Charter. In other words, this amendment 12 to the Electors of the City of merely unties the hands of your City Council. San José, April 12, 1960, 13 NO SPECIFIC PLAN IS PROPOSED IN THIS including "Argument in Favor of Proposition A"). AMENDMENT! 14 One reason is that the City Council should have 15 broad powers to investigate and decide on matters just like this. A second reason is that the 16 policemen and firemen have confidence that the City Council will enact fair and reasonable 17 provisions." 18 (Emphasis added.) 19 Supporting Evidence: City's RJN, Exh. F (Ballot Pamphlet for 20 Charter Amendment – Proposition A, to be 21 submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of 22 Proposition A"). 23 As adopted by the voters in 1965, the Undisputed; 5. San José City Charter states at Section However, Title of Section 1500 reads: "Duty to 24 1500: Provide Retirement System." 25 Except as hereinafter otherwise Supporting Evidence: provided, the Council shall provide, by 26 ordinance or ordinances, for the creation, RJN, Exh. G (1965 Charter) establishment and maintenance of a 27 retirement plan or plans for all officers and employees of the City. Such plan or 28 CASE NO. 1-12-CV-225926

ı	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	plans need not be the same for all	
	officers and employees. Subject to other provisions of this Article, the Council	
	may at any time, or from time to time,	
	amend or otherwise change any retirement plan or plans or adopt or	
	establish a new or different plan or	·
	plans for all or any officers or	
	employees."	
	Supporting Evidence:	
	• RJN, Exh. G (1965 Charter)	
	(emphasis added).	
6.	As adopted by the voters in 1965, the	Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of
	Any and all retirement system or	Existing Retirement Systems"
	systems, existing upon adoption of this	(Emphasis added)
	Charter, for the retirement of officers or employees of the City, adopted under	* It reads, in its entirety:
	any law or color of any law, including	Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement
	but not limited to those retirement	of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including but
	Municipal Code, are hereby confirmed,	not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the
	validated and declared legally effective	San Jose Municipal Code, are hereby confirmed,
	and shall continue until otherwise provided by ordinance However,	validated and declared legally effective and shall
	subject to other provisions of this	continue until otherwise provided by ordinance. The foregoing provisions of this Section shall
	Article, the Council shall at all times have the power and right to repeal or	operate to supply such authorization as may be
	amend any such retirement system or	necessary to validate any such retirement system
	systems, and to adopt or establish a new	or systems which could have been supplied in the Charter of the City of San Jose or by the people of
	or different plan or plans for all or any	the City at the time of adoption or amendment of
	officers or employees, it being the intent that the foregoing sections of this Article	any such retirement system or systems. However,
	shall prevail over the provisions of this	subject to other provisions of this Article, the Council shall at all times have the power and right
	Section."	to repeal or amend any such retirement system or
		systems, and to adopt or establish a new or
	Supporting Evidence:	different plan or plans for all or any officers or employees, it being the intent that the foregoing
		35 CASE NO. 1-12-CV-225926

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	 RJN, Exh. G (1965 Charter) (emphasis added). 	sections of this Article shall prevail over the provisions of this Section.
	,	(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
8.	City Charter section 602 states: "The	Undisputed (although this is not the entirety
	following acts of the Council shall be by ordinance: (a) Those acts required by	section 602)
	specific provision of this Charter or by	
	ordinance."	
	Supporting Evidence:	
	• RJN, Exh. A	
9.	City Charter section 1500 states:	Objection: irrelevant; asked and answered
	"Except as hercinafter otherwise	(substance of Section 1500 addressed in previous
	provided, the Council shall provide, by ordinance or ordinances, for the creation,	paragraph)
	establishment and maintenance of a	
	retirement plan or plans for all officers and employees of the City."	
	Supporting Evidence:	
RJN, Exh. A	• RJN, Exh. A	
The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case,	
	ordinances implementing Measure B.	City Council only amended the Municipal C by way of ordinance to remove the SRBR.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Supporting Evidence:	Sopporting Evidence:
 Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	• Gurza Dec., Exhs. 54 • Allen Dec., ¶21
11. In 2010, a Coalition of City unions made a proposal to the City which stated:	Objection: relevance and undue prejudice Objections to Evidence 2-5
5.1.2. Additional Retirement Contribution.	Additional Supporting Evidence: • Allen Dec., ¶15
Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement	
contributions in an amount equivalent to 10% of total compensation effective June 27,	
2010. The amounts so contributed will be applied to	
subsidize and thus reduce the prior service contributions that	
the City would otherwise be required to make. The parties specifically understand that this	
agreement neither alters nor conflicts with the City Charter	
Section 1505(c) because under this agreement, employees will be subsidizing the City's	
Section 1505(c) required contribution.	
Supporting Evidence:	
• Gurza Dec.,¶ 16-19, Exh. 2.	
12. Other union proposals,	Objection: relevance and undue prejudice
including proposals by the SJPOA and IAFF,	Objections to Evidence 2-5
also proposed that	Additional Supporting Evidence:
employees would pay additional pension	• Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
pension plan unfunded pension liabilities.	
Supporting Evidence: • Gurza Dec.,¶17, 18, Exhs. 3-6.	
13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year	Objection: relevance and undue prejudice Objections to Evidence 11, 12 Additional Supporting Evidence: Allen Dec., ¶15
2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%, one time additional pension contribution): • Association of Engineers and	
Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
 City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 	
 (1BEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). 	
Supporting Evidence: • Gurza Dec., ¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
14. For the period 2010-2011, the following unions either agreed to a wage reduction	Objection: relevance and undue prejudice
3	8 CASE NO. 1-12-CV-

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
or the City imposed a wage reduction:	Objections to Evidence 11, 13
Association of Building, Mechanical and Electric Inspectors (ABMEI)	Additional Supporting Evidence: • Allen Dec., ¶15
Association of Legal Professionals (ALP).	Ancar Dec., 113
Executive Management and	
Professional Employees (Unit 99), and other unrepresented employees.	
outer unrepresented emproyees.	
Supporting Evidence:	
• Gurza Dec.,¶25, Exhs. 9, 13,	
32, 33.	
15. The 2010-2011 Agreement MOA	Objection: relevance and undue prejudice
between the City and AEA, states at Section 10.1.1:	Objections to Evidence 11, 14
On-Going Additional Retirement Contributions. Effective June 27, 2010,	
all employees who are members of the	
Federated City Employees' Retircment System will make additional retirement	
contributions in the amount of 7.30% of	
pensionable compensation, and the amounts so contributed will be applied	
to reduce the contributions that the City	
would otherwise be required to make for	
the pension unfunded liability, which is defined as all costs in both the regular	
retirement fund and the cost-of-living	
fund, except current service normal costs in those funds. This additional	
employee retirement contribution would	
be in addition to the employee retirement contribution rates that have been	
approved by the Federated City	
Employees' Retirement System Board. The intent of this additional retirement	
contribution by employees is to reduce	
the City's required pension retirement	
contribution rate by a commensurate 7.30% of pensionable compensation, as	
illustrated below	

	Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence:	
	• Gurza Dec.,¶27, Exh, 11.	
16.	The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability" (Section 10.1.2)	Objection: relevance and undue prejudice Objections to Evidence 11, 15
	Supporting Evidence:	
	• Gurza Dec.,¶28, Exh, 11.	
17.	The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (Id. at Section 10.1.4))	Objection: relevance and unduc prejudice Objections to Evidence 11, 14
	Supporting Evidence:	
	• Gurza Dec.,¶27, Exh, 11	·
10	The Circle 2010 2011	
18.	The City's 2010-2011 agreements with the following unions stated in	Objection: relevance and undue prejudice
	connection with employees paying additional pensinn contributions "The	Objections to Evidence 11, 15
	parties understand that in order to implement this provision, an amendment	
	must be made in the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
understand that in order to implement	And the second s
this provision, an amendment must be made to the Police and Fire Department	
Retirement Plan that requires an ordinance amending the san Jose	
Municipal Code."	
Association of Engineers and	
Architects (AEA) (plaintiff Mukhar is president),	
Association of Maintenance	
Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
City Association of Management	
Personnel (CAMP) • International Brotherhood of	
Electrical Workers, Local 332	
(IBEW)International Union of Operating	
Engineers, Local No. 3 (representing	
plaintiffs in the Harris case) San José Police Officers Association	
(plaintiff in the SJPOA case).	
Supporting Evidence:	
• Gurza Dec.,¶¶ 6, 28, Exhs. 11,	
15, 17, 23, 25, 29.	
19. In 2011, the City reached agreements with the following unions for their	Objection: relevance and undue prejudice
members to accept an approximate 10%	Objections to Evidence 11, 16
wage reduction for the period 2011-2012:	
Association of Engineers and	
Architects (AEA) (plaintiff Mukhar is president),	
Association of Maintenance	
Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
 City Association of Management 	
Personnel (CAMP) • International Brotherhood of	
Electrical Workers, Local 332	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
 (IBEW) International Union of Operating Engineers, Local No. 3 (represention plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). International Association of Firefighters, Local 230; Supporting Evidence: Gurza Dec., ¶30, Exhs. 	
10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 31, 34.	26,
20. In 2011, the City imposed a Last, Bes and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction	• Effective September 18, 2011, CEO memb
for the period 2011-2012.	realized a 12.16% wage reduction • Effective June 26, 2011, MEF members
Supporting Evidence:	realized a 12.01% wage reduction
 Gurza Dec., ¶ 26, Exhs. 20, 28 	Supporting Evidence:
21. For Federated employees, the Munici Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council by executed agreement with a recognized bargaining unit." (Munici Code 3.28.755)	Note: this section was added to the Municipal Code around June 2010 and became effective 2010 Supporting Evidence: AFSCME RJN, Exh. F
Supporting Evidence:	
 RJN, Exh. C, (Municipal Coo Chapter 3.28). 	le,
22. Under the Municipal Code for Police and Fire Plan employees.	Objection: relevance and undue prejudice Objections to Evidence 24 42 CASE NO. 1-12-CV-22

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
 Police and Fire Plan employees 	
not subject to interest arbitration, "shall	
make such additional retirement contributions as may be required by	
resolution adopted by the city council or	
by executed agreement with a	
recognized bargaining unit." (Municipal Code 3.36.1525(A).)	
 Police and Fire Plan employees 	
subject to interest arbitration, "shall make such additional retirement	
contributions for fiscal years 2010-2011	
as may be required by executed agreement with a recognized bargaining	
unit or binding order of arbitration."	
(Municipal Code 3.36.1525(B).)	
Supporting Evidence:	
 RJN, Exh. D, (Municipal Code, Chapter 3.36). 	
•	
•	
•	
4	3 CASE NO. 1-12-CV-225

There are triable issues of material fact. Therefore, Defendants are not entitled to summary

٠

5

6 7

8

9

10 11

12

13 14

15

16

17

18

19

20

21

22

23

24

2526

27

28

Opposing Party's Response and Supporting Evidence

23. San José Charter Section 1512-A states:

Moving Party's Undisputed Material

Facts and Supporting Evidence

"Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities." Undisputed

Note: this section was added by Measure B

Supporting Evidence:

- RJN, Exh. B.
- 24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Undisputed

Supporting Evidence:

RJN, Exh. E (California
 Assembly Concurrent
 Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

Disputed as incomplete (material terms missing):

stated:
"Anything in Section 78a of the Charter

25. Former San José Charter Section 78b

to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise

CASE NO. 1-12-CV-225926

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

1 Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 amend or otherwise change the change the retirement plan established by 3 retirement plan established by said said Section 78a or any retirement plan or Section 78a or any retirement plan or plans established pursuant to said Section 4 plans established pursuant to said 78a, or adopt or establish a new or different 5 Section 78a, or adopt or established a plan or plans for eligible members of the new or different plan or plans for police or fire department of the City of San 6 cligible members of the police or fire José, for the purpose of providing benefits department of the City of San José" ... for members of any such plan or plans in 7 "all as the Council may deem proper and excess of those benefits authorized or subject to such conditions, restrictions, required by the provisions of said Section 8 limitations, terms and other provisions 89a" ... "all as the Council may deem 9 as the Council may deem proper;..." proper and subject to such conditions, restrictions, limitations, terms and other 10 provisions as the Council may deem proper; Supporting Evidence: provided, however, that: 11 RJN, Exh. E (California (1) The Council shall not decrease any of said 12 Assembly Concurrent benefits below those which Section 78a Resolution No. 17, adopted in makes mandatory, nor otherwise deprive 13 Assembly January 18, 1961, any member of any such plan of any rights approving amendment of to which he would be entitled under Section 14 Charter of San José to include 78a...." Section 78b ("Discretionary 15 (Emphasis added.) Powers of Council Respecting 16 Retirement") of Article X). **Supporting Evidence:** 17 • City's RJN, Exh. E (California Assembly 18 Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving 19 amendment of Charter of San José to 20 include Section 78b ("Discretionary Powers of Council Respecting Retirement") of 21 Article X). 22 26. The ballot argument in favor of Disputed as incomplete Proposition A stated: 23 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A 24 DISCRETIONARY POWERS TO THE also says: CITY COUNCIL! It is good 25 YOUR POLICE AN FIREMEN NEED government to allow the City Council to PROPOSITION A! Proposition A was placed on be responsible for investigating 26 the ballot by the City Council at the request of the problems and deciding how to solve them. [¶] THIS AMENDMENT IS members of your police and fire departments. The 27 purpose of this amendment is to enable the City SIMPLE! Leave all the technical details 28 Council to take legal steps to provide survivor up to your City Council. They have a

45 CASE NO.

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

CASE NO. 1-12-CV-225926

M	oving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	staff to assist them including a very capable City Attorney."	benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not have Social Security or any other survivor
Supporting Evidence:	benefits of any kind. Almost all other cities provide survivor benefits.	
• RJN, Exh. F (Ballot Pamphlet for Charter Amendment — Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.	
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matters just like this. A second reason is that the policemen and firemen have confidence that the
		City Council will enact fair and reasonable provisions."
		(Emphasis added.)
	Supporting Evidence:	
	 City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A"). 	
27.	As adopted by the voters in 1965, the	Undisputed
San José City Charter states at Section 1500: Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council	However, Title of Section 1500 reads: "Duty to Provide Retirement System."	
	Supporting Evidence:	
	RJN, Exh. G (1965 Charter)	
	may at any time, or from time to time, amend or otherwise change any	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
establish a new or different plan or plans for all or any officers or employees."	
Supporting Evidence:	
RJN, Exh. G (1965 Charter) (emphasis added).	
28. As adopted by the voters in 1965, the	Disputed as incomplete
San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance Existing Retirement Systems"
Any and all retirement system or systems, existing upon adoption of this	(emphasis added)
Charter, for the retirement of officers or	* It reads, in its entirety:
cmployees of the City, adopted under any law or color of any law, including	Any and all retirement system or systems, ex
but not limited to those retirement	upon adoption of this Charter, for the retires of officers or employees of the City, adopted
systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including
Municipal Code, are hereby confirmed,	hot limited to those retirement systems established Parts 1, 2 and 4 of Chapter 9 of Article II
validated and declared legally effective and shall continue until otherwise	San Jose Municipal Code, are hereby confirm
provided by ordinance However,	validated and declared legally effective and s continue until otherwise provided by ordinar
subject to other provisions of this Article, the Council shall at all times	The foregoing provisions of this Section shall operate to supply such authorization as may
have the power and right to repeal or	necessary to validate any such retirement sys
amend any such retirement system or systems, and to adopt or establish a new	or systems which could have been supplied i Charter of the City of San Jose or by the peop
or different plan or plans for all or any	the City at the time of adoption or amendmen
officers or employees, it being the intent that the foregoing sections of this Article	any such retirement system or systems. However, subject to other provisions of this Article, the
shall prevail over the provisions of this Section."	Council shall at all times have the power and
Section,	to repeal or amend any such retirement systesystems, and to adopt or establish a new or
Supporting Evidence:	different plan or plans for all or any officers
RJN, Exh. G (1965 Charter).	employees, it being the intent that the forego sections of this Article shall prevail over the
222.3, 222.2 (1200 6)(01).	provisions of this Section.
	(emphasis added)
	Supporting Evidence:
	• City's RJN, Exh. G (1965 Charter) 47 CASE NO. 1-12-CV-2

Ŋ	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		(emphasis added).
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence: • RJN, Exh. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety Section 602)
	Supporting Evidence: • RJN, Exh. A	
31.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in prev paragraph)
	Supporting Evidence: • RJN, Exh. A	
32.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSCME's case, City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:

N	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	 Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	• Gurza Dec., Exhs. 54 • Allen Dec., ¶20
33.	Municipal Code §3.28.385(C) provides:	Undisputed
	"Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."	Note: this section was added to the Municipa Code around May 2011 Supporting Evidence:
	Supporting Evidence: • RJN, Exh. C.	• AFSCME RJN G
34.	Municipal Code §3.36.575(D) provides:	Objection: relevance and undue prejudice
	"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."	Objections to Evidence 24
	Supporting Evidence:	
	RJN, Exh. D.	
35.	In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.	Undisputed
	 Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 	
36.	Beginning in 2009, the City reached agreement with the following City	Disputed
	unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.	When MEF and CEO reached an agreement 2009 with respect to funding of the AR they did so in part because of the follow attendant circumstances: a guaranteed s increase for the remaining year of the
	Association of Building, Mechanical	contract, a healthy economy, and the he

2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	and Electrical Inspectors (ABME1),Association of Engineers and	financial situation of the City. At the time, AFSCME was unaware of the
4	Architects, IFPTE Local 21 (AEA Units 41/42 and 43),Association of Maintenance	approximately 20% reduction in staffing an drastic reductions to compensation (reduced
5	Supervisory Personnel (AMSP),City Association of Management	pay, increased health benefit cost, etc.) that the City would affect in the future. The
6	Personnel (CAMP),International Brotherhood of Electrical	effect of these changes made a material impact on the significance of the 2009
7	Workers, Local No. 332 (IBEW);Municipal Employees' Federation,	agreement, and resulted in significantly greater costs by active employees under the
9	AFSCME Local 101 (MEF)Confidential Employees Association,	2009. At the time, AFSCME was unaware of the City's future plans to design Measure
10	AFSCME Local 101 (CEO);International Association of Firefighters, Local 230;	B and put it to the voters. As a result of these intervening events, the 2009
11	San José Police Officers Association.	agreement was never fully implemented by
12	Cunnauting Ewideness	the City and, indeed, key provisions have not been abandoned by the parties. It is
13	Supporting Evidence: • Gurza Dec. ¶39, Exhs. 21, 39,	AFSCME's position that the parties are no longer operating under the agreement, if
14	40, 41.	they ever were.
15		Supporting Evidence: Allen Decl, ¶17; Doonan Decl. ¶ 78.
16	37. The City's agreement with AEA stated:	Objection: relevance and undue prejudice
17	The City and Employee Organization	Objections to Evidence 18
1/	games to transition from the and	Cojections to savidence 16
18	agree to transition from the current partial pre-funding of retiree medical	Disputed: City's cited sourced do not support its
	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding	
18	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree	Disputed: City's cited sourced do not support its
18 19	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required	Disputed: City's cited sourced do not support its
18 19 20	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree	Disputed: City's cited sourced do not support its
18 19 20 21 22 23	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so	Disputed: City's cited sourced do not support its
18 19 20 21 22 23	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization)The City and	Disputed: City's cited sourced do not support its
18 19 20 21 22 23 24 25	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization)The City and Plan members (active employees) shall contribute to funding the ARC in the	Disputed: City's cited sourced do not support its
18 19 20 21 22 23	agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization)The City and Plan members (active employees) shall	Disputed: City's cited sourced do not support its

1 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	in the ratio of one-to-one. Contributions	
	for retiree dental benefits shall be made by the City and members in the ratio of	
4	eight-to-three The Municipal Code and/or applicable plan documents shall	
5	be amended in accordance with the above.	
6		
7	Supporting Evidence: • Gurza Dec. ¶ 32 Exb. 40, AEA,	
8	Section 12.1.	
9	38. The AEA agreement further stated:	Objection: relevance and undue prejudice
10	The payments of the full ARC were to	Objections to Evidence 19
11	be phased in incrementally but: "[B]y the end of the five year phase-in, the	
12	City and plan members shall be contributing the full Annual Required	
13	Contribution in the ratio currently provided under Section 3.28.380 (C) (1)	
14	and (3) of the San José Municipal Code."	
15		
16	Supporting Evidence:	
17 18	• Gurza Decl., ¶41, Exh. 39, AEA, §12.3.	
19	39. The provisions from the AEA agreement	Undisputed
	on payments towards the full ARC is the	•
20	same or substantially similar to the text in City agreements with the following	
21	unions:	
22	Association of Building, Mechanical and Electrical Inspectors (ABMEI),	
23	Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and	
24	43), Association of Maintenance Supervisory Personnel (AMSP), City	
25	Association of Management Personnel (CAMP), International Brotherhood of	
26	Electrical Workers, Local No. 332 (IBEW); Municipal Employees'	
27	Federation, AFSCME Local 101 (MEF); Confidential Employees Association,	
28		CASE NO. 1-12-CV-225926
	<u> </u>	4

SEPARATE STATEMENT OF UNDISPUTED FACTS.
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

N	loving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	AFSCME Local 101 (CEO).	
	Supporting Evidence:	
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
40.	The SJPOA and Firefighters agreements	Objection: relevance and undue prejudice
	on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and	Objections to Evidence 22, 23
	provide for meet and confer and dispute resolution procedures for amounts over that percentage.	
	Supporting Evidence:	
	• Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh.	
	41[SJPOA].	
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased	Objection: relevance and undue prejudice Objections to Evidence 20, 21
	contributions, incrementally, towards paying the full ARC.	
	Supporting Evidence:	
	• Gurza Dec., ¶43, Exh. 42, 43	
1		
		CASE NO. 1-12-CV-22592 OF UNDISPUTED FACTS

There are triable issues of material fact. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

JV	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
42.	Section 1511-A ("Supplemental Payments to Retirces") of Measure B states:	Undisputed
	The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.	
	Supporting Evidence:	
	• RJN, Exh. B.	
43.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	Undisputed
	Supporting Evidence:	
	• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
44.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing):
	"Anything in Section 78a of the Charter to the contrary notwithstanding, the	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in

CASE NO. 1-12-CV-225926

Moving Party's Undisputed Material Opposing Party's Response and Supporting Evidence Facts and Supporting Evidence 2 its discretion may at any time, or from time Council in its discretion may at any 3 time, or from time to time, by ordinance, to time, by ordinance, amend or otherwise change the retirement plan established by amend or otherwise change the 4 said Section 78a or any retirement plan or retirement plan established by said plans established pursuant to said Section Section 78a or any retirement plan or 5 78a, or adopt or establish a new or different plans established pursuant to said 6 plan or plans for eligible members of the Section 78a, or adopt or established a police or fire department of the City of San new or different plan or plans for 7 José, for the purpose of providing benefits eligible members of the police or fire for members of any such plan or plans in department of the City of San José" ... 8 excess of those benefits authorized or "all as the Council may deem proper and subject to such conditions, restrictions, required by the provisions of said Section. 9 89a" ... "all as the Council may deem limitations, terms and other provisions 10 proper and subject to such conditions, as the Council may deem proper;..." restrictions, limitations, terms and other 11 provisions as the Council may deem proper; Supporting Evidence: provided, however, that: 12 RJN, Exh. E (California (1) The Council shall not decrease any of said 13 Assembly Concurrent benefits below those which Section 78a Resolution No. 17, adopted in makes mandatory, nor otherwise deprive 14 Assembly January 18, 1961, any member of any such plan of any rights to which he would be entitled under Section approving amendment of 15 Charter of San José to include 78a...." 16 Section 78b ("Discretionary (Emphasis added.) Powers of Council Respecting 17 Supporting Evidence: Retirement") of Article X). • City's RJN, Exh. E (California Assembly 18 Concurrent Resolution No. 17, adopted in 19 Assembly January 18, 1961, approving amendment of Charter of San José to 20 include Section 78b ("Discretionary Powers of Council Respecting Retirement") of 21 Article X). 22 Disputed as incomplete 45. The ballot argument in favor of Proposition A stated: 23 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A 24 DISCRETIONARY POWERS TO THE also says: CITY COUNCIL! It is good 25 YOUR POLICE AN FIREMEN NEED government to allow the City Council to PROPOSITION A! Proposition A was placed on 26 be responsible for investigating the ballot by the City Council at the request of the problems and deciding how to solve 27 members of your police and fire departments. The them. [¶] THIS AMENDMENT IS purpose of this amendment is to enable the City SIMPLE! Leave all the technical details 28 CASE NO. 1-12-CV-225926

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	up to your City Council. They have a staff to assist them including a very capable City Attorney." Supporting Evidence:	Council to take legal steps to provide survivor benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do no have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
	• RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor	SURVIVOR BENEFITS ARE PROHIBITED A PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matter just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable
		provisions." (Emphasis added.)
		Supporting Evidence:
		 City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of Sar José, April 12, 1960, including "Argumen in Favor of Proposition A").
46.	As adopted by the voters in 1965, the	Undisputed Undisputed
	San José City Charter states at Section 1500:	
	Except as hereinafter otherwise	
provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers		
	and employees of the City. Such plan or plans need not be the same for all	
	officers and employees. Subject to other provisions of this Article, the Council	
	may at any time, or from time to time, amend or otherwise change any	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."	
	Supporting Evidence:	
	 RJN, Exh. G (1965 Charter) (emphasis added). 	
47.	As adopted by the voters in 1965, the San José City Charter states at Section 1503:	Disputed as incomplete * The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added.) * It reads, in its entirety:
	Charter, for the retirement of officers or employees of the City, adopted under	Any and all retirement system or systems, existing
	any law or color of any law, including but not limited to those retirement	upon adoption of this Charter, for the retirement of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including but not limited to those retirement systems established
	Municipal Code, are hereby confirmed, validated and declared legally effective	by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed,
	and shall continue until otherwise provided by ordinance However,	validated and declared legally effective and shall continue until otherwise provided by ordinance.
	subject to other provisions of this Article, the Council shall at all times	The foregoing provisions of this Section shall operate to supply such authorization as may be
	have the power and right to repeal or amend any such retirement system or	necessary to validate any such retirement system or systems which could have been supplied in the
	systems, and to adopt or establish a new or different plan or plans for all or any	Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of
	officers or employees, it being the intent that the foregoing sections of this Article	any such retirement system or systems. However,
	shall prevail over the provisions of this Section."	subject to other provisions of this Article, the Council shall at all times have the power and right
	Section.	to repeal or amend any such retirement system or systems, and to adopt or establish a new or
	Supporting Evidence:	different plan or plans for all or any officers or employees, it being the intent that the foregoing
	• RJN, Exh. G (1965 Charter).	sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added.)
		Supporting Evidence:

Ì	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	•	City's RJN, Exh. G (1965 Charter)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The	Undisputed (although this is not the entirety
	following acts of the Council shall be by	Section 602)
	ordinance: (a) Those acts required by specific provision of this Charter or by	
	ordinance."	
	Supporting Evidence:	
	• RJN, Exh. A	
50.	City Charter section 1500 states: "Except as hereinafter otherwise	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in
	provided, the Council shall provide, by ordinance or ordinances, for the creation,	previous paragraph)
	establishment and maintenance of a	
	retirement plan or plans for all officers and employees of the City."	
	and employees of the entry.	·
	Supporting Evidence:	
	• RJN, Exh. A	
51.	The City Council has enacted some	Disputed: as is relevant to AFSMCE's case,
	ordinances implementing Measure B.	City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	• Gurza Decl, Exhs. 54, 55	Gurza Dec., Exhs. 54
	(Federated, Police and Fire	• Allen Dec., ¶21

	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
52.	For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the eity council or on its own motion, the board may make recommendations to the eity council regarding distribution, if any, of the supplemental retiree henefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." Supporting Evidence: RJN, Exh. C.	Full text: "Upon the request of the city council or on it own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." (Emphasis added.)
		Supporting Evidence: • City's RJN, Exh. C.
53.	Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013. Supporting Evidence: RJN., Exhs. L, M, N	Disputed: cited sources only demonstrate suspended distributions in fiscal years 2 2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)
54.	For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology" Supporting Evidence:	Objection: irrelevant and unduly prejudicial Objections to evidence 24
	RJN., Exh. D.	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	55. In 2002, the City Council adopted	Objection: irrelevant and unduly prejudicial
	Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree	Objections to evidence 25
	Benefit Reserve Of The Police and Fire Department Retirement Fund."	
	Supporting Evidence:	
	• RJN., Exh. N.	
	56. Beginning in 2010, the City Council amended the Municipal Code for the	Objection: irrelevant and unduly prejudicial
	Police and Fire retirement plan to provide	Objections to evidence 24
	that "there shall be no distribution during calendar years 2010, 2011, 2012 or	
	during calendar year 2013" (Municipal Code section 3.36.580(D)(2)	
	Suppositing Exidences	
	Supporting Evidence: • RJN., Exh. D.	
	TOTAL	
	57. In 1986 when the City Council authorized the Federated SRBR, and in	Undisputed as to Federated City Employees' Retirement System
	2001, when the City Council authorized	Tomomon System
	the Police and Fire SRBR, the actuaries reported that the City's two pension	
	retirement funds were fully funded.	
•		
	Supporting Evidence:	
	 RJN, Exh. O [November 22, 1985 Letter from Coates, 	·
	Herfurth & England, to Edward	
	F. Overton, Retirement and Benefits Administrator, re:	
	SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation	
	Report, City of San José Police	
	and Fire Department Retirement Plan, as of June 30, 2012, at p.	
'	5 (showing plan overfunded at	
:	114.8% as of June 30, 2001]	59 CASE NO. 1-12-CV-225926

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
58.	In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	Undisputed as to Federated City Employees Retirement System
	Supporting Evidence:	
	 Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department 	
	Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
59.	In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.	Undisputed as to Federated City Employees Retirement System
	Supporting Evidence: • Gurza Dec., Exhs. 44, 45, 46, 47, 48.	

3. <u>Constitutional Taking Of Private Property Without Due Process, California</u> Constitution Article I, Section 7

AFSCME fourth cause of action

Issue 3A: San José Charter §1506-A (Employee Additional Pension Contributions)

There are triable issues of material facts. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1.	Section 1506-A ("Current Employees") of Measure B states:	Undisputed
(a)	"Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).	
(b)	Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.	
(c)	The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.	

Ŋ	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(d)	The compensation adjustment through	
	additional employee contributions for Current Employees shall be calculated	
	separately for employees in the Police	
	and Fire Department Retirement Plan	
	and employees in the Federated City Employees' Retirement System.	,
(e)	The compensation adjustment shall be	
` ′	treated in the same manner as any other	
	employee contributions. Accordingly, the voters intend these additional	
	payments to be made on a pre-tax basis	·
	through payroll deductions pursuant to applicable Internal Revenue Code	
	Sections. The additional contributions	
	shall be subject to withdrawal, return and redeposit in the same manner as any	
	other employee contributions.	
	·	
	Supporting Evidence:	
	Defendant's Request for	
	Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
	m, pp. 12 (1330mm = 7)	
····		
2.	On or around April 12, 1960, the voters	Undisputed
	ratified Proposition A, which amended the San José Charter to include Section	·
	78b.	
	:	
	Supporting Evidence:	
	RJN, Exh. E (California Agazethy Consument)	
	Assembly Concurrent Resolution No. 17, adopted in	
	Assembly January 18, 1961,	
	approving amendment of Charter of San José to include	
	Section 78b ("Discretionary	
	Powers of Council Respecting Retirement") of Article X).	
	Remement) of Affice A).	2 CASE NO. 1-12-CV-2

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms miss In relevant part, the section read:
	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;"	"Anything in Section 78a of the Charter the contrary notwithstanding, the Councits discretion may at any time, or from to time, by ordinance, amend or otherw change the retirement plan established by said Section 78a or any retirement plan plans established pursuant to said Section 78a, or adopt or establish a new or differ plan or plans for eligible members of the police or fire department of the City of José, for the purpose of providing benefitor members of any such plan or plans a excess of those benefits authorized or required by the provisions of said Section 89a" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other
	Supporting Evidence:	provisions as the Council may deem pro provided, however, that:
	 RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting 	(1) The Council shall not decrease any of sa benefits below those which Section 78a makes mandatory, nor otherwise deprivany member of any such plan of any rig to which he would be entitled under Sec 78a"
		(Emphasis added.)
	Retirement") of Article X).	Supporting Evidence:
	 City's RJN, Exh. E (California Asser Concurrent Resolution No. 17, adopted Assembly January 18, 1961, approving 	
		amendment of Charter of San José to include Section 78b ("Discretionary Power
		of Council Respecting Retirement") of Article X).
4.	The ballot argument in favor of Proposition A stated:	Disputed as incomplete
	"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE	The ballot argument in favor of Proposition
	6.	3 CASE NO. 1-12-CV-22

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	CITY COUNCIL! It is good	also says:
	government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."	"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on
		the ballot by the City Council at the request of the
		members of your police and fire departments. The purpose of this amendment is to enable the City
		Council to take legal steps to provide survivor benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not
		have Social Security or any other survivor
	Supporting Evidence:	benefits of any kind. Almost all other cities provide survivor benefits.
	 RJN, Exh. F (Ballot Pamphlet for Charter Amendment – 	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order
	Proposition A, to be submitted to the Electors of the City of	to allow the City Council to adopt reasonable
	San José, April 12, 1960, including "Argument in Favor of Proposition A").	survivar benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
		NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matters just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."
		(Emphasis added.)
		Supporting Evidence:
		• City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be
		submitted to the Electors of the City of San José, April 12, 1960, including "Argument
5.	As adopted by the voters in 1965 tha	in Favor of Proposition A"). Undisputed;
ی.	5. As adopted by the voters in 1965, the San José City Charter states at Section	However, Title of Section 1500 reads: "Duty to
	1500:	Provide Retirement System."
	Except as hereinafter otherwise provided, the Council shall provide, by	Supporting Evidence:
	ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers	• RJN, Exh. G (1965 Charter)
		64 CASE NO. 1-12-CV-225926

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<u> </u>	and employees of the City. Such plan or	
	plans need not be the same for all officers and employees. Subject to other	
	provisions of this Article, the Council	
	may at any time, or from time to time, amend or otherwise change any	
	retirement plan or plans or adopt or	
	establish a new or different plan or	
	plans for all or any officers or employees."	
	Supporting Evidence:	
	RJN, Exh. G (1965 Charter)	
	(emphasis added).	
6. As adopted by the voters in 1965, the	• •	Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or	(Emphasis added.)
systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under		* It reads, in its entirety:
	Any and all retirement system or systems, existi	
	any law or color of any law, including but not limited to those retirement	upon adoption of this Charter, for the retireme of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4	under any law or color of any law, including bu
	of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed,	not limited to those retirement systems establish
validated and declared legally effective and shall continue until otherwise provided by ordinance However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article	by Parts 1, 2 and 4 of Chapter 9 of Article II of San Jose Municipal Code, are hereby confirmed	
	provided by ordinance However, subject to other provisions of this	validated and declared legally effective and sha
		continue until otherwise provided by ordinance The foregoing provisions of this Section shall
		operate to supply such authorization as may be
		necessary to validate any such retirement system or systems which could have been supplied in the
	systems, and to adopt or establish a new	Charter of the City of San Jose or by the people
	the City at the time of adoption or amendment of	
	that the foregoing sections of this Article	any such retirement system or systems. However, subject to other provisions of this Article, the
	shall prevail over the provisions of this Section."	Council shall at all times have the power and rig
	becau.	to repeal or amend any such retirement system systems, and to adopt or establish a new or
		different plan or plans for all or any officers or
		CASE NO. 1-12-CV-2259

	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence: • RJN, Exh. G (1965 Charter) (emphasis added).	employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section. (Emphasis added.) Supporting Evidence: City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council." Supporting Evidence: RJN, Exh. A.	Undisputed
8.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance." Supporting Evidence: RJN, Exh. A	Undisputed (although this is not the entirety section 602)
9.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City." Supporting Evidence: • RJN, Exh. A	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previparagraph)
10.	The City Council has enacted some	Disputed: as is relevant to AFSMCE's case,

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
ordinances implementing Measure B.	City Council only amended the Municipal C by way of ordinance to remove the SRBR.
Supporting Evidence:	Supporting Evidence:
Gurza Decl, Exhs. 54, 55	Gurza Dec., Exhs. 54
(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
11. In 2010, a Coalition of City unions	Objection: relevance and undue prejudice
made a proposal to the City which stated:	Objections to Evidence 2-5
5.1.2. Additional Retirement	Additional Supporting Evidence:
Contribution.	• Allen Dec., ¶15
Effective June 27, 2010 through	
June 28, 2011, all employees will make additional retirement	
contributions in an amount equivalent to 10% of total	
compensation effective June 27, 2010. The amounts so	
contributed will be applied to subsidize and thus reduce the	·
prior service contributions that	
the City would otherwise be required to make. The parties	
specifically understand that this agreement neither alters nor	
conflicts with the City Charter	
Section 1505(c) because under this agreement, employees will	
be subsidizing the City's Section 1505(c) required	
contribution.	
Supporting Evidence	
Supporting Evidence: • Gurza Dec.,¶¶ 16-19, Exh. 2.	
12 01	Objection: relevance and undue prejudice
12. Other union proposals, including proposals by the SJPOA and IAFF, also	Objections to Evidence 2-5
proposed that employees would pay additional pension contributions to	Additional Supporting Evidence:
defray pension plan unfunded pension liabilities.	• Allen Dec., ¶15

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Supporting Evidence: Gurza Dec.,¶17, 18, Exhs. 3-6. 13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%. one time additional pension contribution): Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case).	Objection: relevance and unduc prejudice Objections to Evidence 11, 12 Additional Supporting Evidence: Allen Dec., ¶15
• Gurza Dec.,¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction: Association of Building, Mechanical and Electric Inspectors (ABME1)	Objection: relevance and undue prejudice Objections to Evidence 11, 13 Additional Supporting Evidence: Allen Dec., ¶15
Association of Legal Professionals	58 CASE NO. 1-12-CV

M	oving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(ALP)Executive Management and Professional Employees (Unit 99), and other unrepresented employees.	
	Supporting Eyidence:	
	• Gurza Dec.,¶25, Exhs. 9, 13, 32, 33.	
	The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:	Objection: relevance and undue prejudice Objections to Evidence 11, 14
ı	On-Going Additional Retirement	·
	Contributions. Effective June 27, 2010, all employees who are members of the	
•	Federated City Employees' Retirement	
	System will make additional retirement contributions in the amount of 7.30% of	
	pensionable compensation, and the amounts so contributed will be applied	
	to reduce the contributions that the City	
•	would otherwise be required to make for the pension unfunded liability, which is	
	defined as all costs in both the regular retirement fund and the cost-of-living	
:	fund, except current service normal costs in those funds. This additional	
i	employee retirement contribution would	
	be in addition to the employee retirement contribution rates that have been	
	approved by the Federated City Employees' Retirement System Board.	
•	The intent of this additional retirement	
-	contribution by employees is to reduce the City's required pension retirement	
	contribution rate by a commensurate 7.30% of pensionable compensation, as	
	illustrated below	
:	Supporting Evidence:	
	• Gurza Dec.,¶27, Exh, 11.	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
6. The 2010-2011 MOA between the City and AEA, also agreed to employees	Objection: relevance and undue prejudice
making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise he required to make during that time period for the pension	Objections to Evidence 11, 15
unfunded liability" (Section 10.1.2)	
Supporting Evidence:	
• Gurza Dec.,¶28, Exh, 11.	
17. The 2010-2011 MOA between the City and AEA stated in connection with	Objection: relevance and undue prejudice
and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose	Objections to Evidence 11, 14
Municipal Code." (Id. at Section 10.1.4))	
Supporting Evidence:	
• Gurza Dec.,¶27, Exh, 11	
18. The City's 2010-2011 agreements with the following unions stated in	Objection: relevance and undue prejudice
connection with employees paying additional pension contributions "The	Objections to Evidence 11, 15
parties understand that in order to implement this provision, an amendment	
must be made to the Federated Employees' Retirement System that requires an ordinance amending the San	
Jose Municipal Code" or "The parties understand that in order to implement	
this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Municipal Code."	rajena i 1900. i i primario de Partinia de Companya de Partino, i i i i i i i i i i i i i i i i i i i
 Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), 	
 Association of Maintenance Supervisory Personnel (AMSP) 	
 (plaintiff Dapp is president) City Association of Management 	
Personnel (CAMP) • International Brotherhood of	
Electrical Workers, Local 332 (IBEW)	
International Union of Operating Engineers, Local No. 3 (representing	
plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the STROA case)	
(plaintiff in the SJPOA case).	
Supporting Evidence:	
• Gurza Dec.,¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	·
19. In 2011, the City reached agreements	Objection: relevance and undue prejudice
with the following unions for their members to accept an approximate 10%	Objections to Evidence 11, 16
wage reduction for the period 2011-2012:	
 Association of Engineers and Architects (AEA) (plaintiff Mukhar is 	
president),Association of Maintenance	
Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
 City Association of Management Personnel (CAMP) 	
International Brotherhood of Electrical Workers, Local 332	
(IBEW) • International Union of Operating	
Engineers, Local No. 3 (representing plaintiffs in the Harris case)	
San José Police Officers Association	71 CASE NO. 1-12-CV-22

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(plaintiff in the SJPOA case). • International Association of Firefighters, Local 230;	
Supporting Evidence:	
• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME	Undisputed, but for clarification purposes:
for an approximate 12% wage reduction for the period 2011-2012.	• Effective September 18, 2011, CEO membrealized a 12.16% wage reduction
Supporting Evidence: • Gurza Dec., ¶ 26, Exhs. 20, 28	• Effective June 26, 2011, MEF members realized a 12.01% wage reduction
	Supporting Evidence:
	Gurza Dec., Exhs. 20, 28
21. For Federated employees, the Municipal Code provides: "Notwithstanding any	Undisputed
other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement	Note: this section was added to the Municipal Code around June 2010 and became effective 2010
contributions as may be required by	Supporting Evidence:
resolution adopted by the city council or by executed agreement with a	• AFSCME RJN, Exh. F
recognized bargaining unit." (Municipal Code 3.28.755)	
Supporting Evidence:	
 RJN, Exh. C, (Municipal Code, Chapter 3.28). 	
22. Under the Municipal Code for Police	
and Fire Plan employees.	Objection: relevance and undue prejudice Objections to Evidence 24
Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement	S SJONION OF DYNAMIC 2 /
Trans againment remoment	72 CASE NO. 1-12-CV-22

•

1

7

9 10

11

12 13

14

15

16

17

18

19

20

21 22

23

24

25

26 27

28

There are triable issues of material fact. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

Opposing Party's Response and Moving Party's Undisputed Material Facts and Supporting Evidence Supporting Eyidence

23. San José Charter Section 1512-A states:

"Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."

Undisputed

Note: this section was added by Measure B

Supporting Evidence:

- RJN, Exh. B.
- 24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Undisputed

Supporting Evidence:

RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

Disputed as incomplete (material terms missing):

- 25. Former San José Charter Section 78b stated:
 - "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance,

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise CASE NO. 1-12-CV-225926

Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Eyidence 2 amend or otherwise change the change the retirement plan established by 3 retirement plan established by said said Section 78a or any retirement plan or Section 78a or any retirement plan or plans established pursuant to said Section 4 plans established pursuant to said 78a, or adopt or establish a new or different 5 Section 78a, or adopt or established a plan or plans for eligible members of the new or different plan or plans for police or fire department of the City of San 6 cligible members of the police or fire José, for the purpose of providing benefits department of the City of San José" ... for members of any such plan or plans in 7 "all as the Council may deem proper and excess of those benefits authorized or subject to such conditions, restrictions, required by the provisions of said Section 8 limitations, terms and other provisions 89a" ... "all as the Council may deem 9 as the Council may deem proper;..." proper and subject to such conditions, restrictions, limitations, terms and other 10 provisions as the Council may deem proper; Supporting Evidence: provided, however, that: 11 RJN, Exh. E (California (1) The Council shall not decrease any of said 12 Assembly Concurrent benefits below those which Section 78a Resolution No. 17, adopted in makes mandatory, nor otherwise deprive 13 Assembly January 18, 1961, any member of any such plan of any rights approving amendment of to which he would be entitled under Section 14 Charter of San José to include 78a...." Section 78b ("Discretionary 15 (Emphasis added.) Powers of Council Respecting 16 Retirement") of Article X). Supporting Evidence: 17 City's RJN, Exh. E (California Assembly) 18 Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving 19 amendment of Charter of San José to 20 include Section 78b ("Discretionary Powers of Council Respecting Retirement") of 21 Article X) 22 26. The ballot argument in favor of Disputed as incomplete Proposition A stated: 23 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A 24 DISCRETIONARY POWERS TO THE also says: CITY COUNCIL! It is good 25 'YOUR POLICE AN FIREMEN NEED government to allow the City Council to be responsible for investigating PROPOSITION A! Proposition A was placed on 26 problems and deciding how to solve the ballot by the City Council at the request of the members of your police and fire departments. The them. [¶] THIS AMENDMENT IS 27 SIMPLE! Leave all the technical details purpose of this amendment is to enable the City 28 Council to take legal steps to provide survivor up to your City Council, They have a CASE NO. 1-12-CV-225926 75

2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	staff to assist them including a very capable City Attorney."	benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not have Social Security or any other survivor
5	Supporting Evidence:	benefits of any kind. Almost all other cities provide survivor benefits.
6 7 8	for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960,	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
) 	including "Argument in Favor of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
1		One reason is that the City Council should have broad powers to investigate and decide on matters
3		just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."
4		(Emphasis added.)
5		Supporting Evidence:
5		City's RJN, Exh. F (Ballot Pamphlet for
, }		Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").
اا ٰ	27. As adopted by the voters in 1965, the	Undisputed
)	San José City Charter states at Section 1500: Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council	However, Title of Section 1500 reads: "Duty to Provide Retirement System."
1		Supporting Evidence:
2		• RJN, Exh. G (1965 Charter)
3		
4 5		
5		
7	may at any time, or from time to time, amend or otherwise change any	
8	retirement plan or plans or adopt or	76 CASE NO. 1-12-CV-225926

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	establish a new or different plan or plans for all or any officers or employees."	
	Supporting Evidence: • RJN, Exh. G (1965 Charter) (emphasis added).	
28.	As adopted by the voters in 1965, the	Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added.)
	Charter, for the retirement of officers or employees of the City, adopted under	* It reads, in its entirety:
	any law or color of any law, including but not limited to those retirement	Any and all retirement system or systems, exist upon adoption of this Charter, for the retirement of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including but not limited to those retirement systems establish
	Municipal Code, are hereby confirmed, validated and declared legally effective	by Parts 1, 2 and 4 of Chapter 9 of Article II of San Jose Municipal Code, are hereby confirme
	and shall continue until otherwise provided by ordinance However,	validated and declared legally effective and sha continue until otherwise provided by ordinance
	subject to other provisions of this	The foregoing provisions of this Section shall
	Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article	operate to supply such authorization as may be necessary to validate any such retirement syste or systems which could have been supplied in
		Charter of the City of San Jose or by the people the City at the time of adoption or amendment
		any such retirement system or systems. However
	shall prevail over the provisions of this Section."	subject to other provisions of this Article, the Council shall at all times have the power and river repeal or among the state and release to the power and state and state are the state and state and state are the state are
		to repeal or amend any such retirement system systems, and to adopt or establish a new or
	Supporting Evidence:	different plan or plans for all or any officers or employees, it being the intent that the foregoin
	• RJN, Exh. G (1965 Charter).	sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added.)
		Supporting Evidence:
		• City's RJN, Exh. G (1965 Charter) 77 CASE NO. 1-12-CV-225

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety Section 602)
	Supporting Evidence:	
	• RJN, Exh. A	
31.	"Except as hereinafter otherwise	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in pre- paragraph)
	Supporting Evidence: • RJN, Exh. A	
32.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, City Council has only implement the elimination of the SRBR.
	Supporting Evidence:	Supporting Evidence:
	• Gurza Decl, Exhs. 54, 55	• Gurza Dec., Exhs. 54

V	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
33.	Municipal Code §3.28.385(C) provides:	Undisputed
	"Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one."	Note: this section was added to the Municipal Code around May 2011 Supporting Evidence:
	Supporting Evidence: • RJN, Exh. C.	• AFSCME RJN G
34.	Municipal Code §3.36.575(D) provides:	Objection: relevance and undue prejudice
	"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."	Objections to Evidence 24
	Supporting Evidence: • RJN, Exh. D.	
35.	In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.	Undisputed
	 Supporting Evidence: Gurza Dcc., ¶¶ 35-37, Exhs. 36, 37, 38. 	
36.	Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.	Disputed When MEF and CEO reached an agreement 2009 with respect to funding of the ARC they did so in part because of the follow attendant circumstances: a guaranteed s increase for the remaining year of the
	Association of Building, Mechanical and Electrical Inspectors (ABMEI),	contract, a healthy economy, and the he financial situation of the City. At the ti

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),	AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced
	Association of Maintenance Supervisory Personnel (AMSP),	pay, increased health benefit cost, etc.) that
	City Association of Management Personnel (CAMP),	the City would affect in the future. The effect of these changes made a material
	International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation,	impact on the significance of the 2009 agreement, and resulted in significantly
	AFSCME Local 101 (MEF)Confidential Employees Association,	greater costs by active employees under the 2009. At the time, AFSCME was unaware
	AFSCME Local 101 (CEO);International Association of	of the City's future plans to design Measure B and put it to the voters. As a result of
	Firefighters, Local 230;San José Police Officers Association.	these intervening events, the 2009 agreement was never fully implemented by
		the City and, indeed, key provisions have not been abandoned by the parties. It is
	• Gurza Dec. ¶39, Exhs. 21, 39,	AFSCME's position that the parties are no longer operating under the agreement, if
	40, 41.	they ever were. Supporting Evidence:
		Allen Decl, ¶17; Doonan Decl. ¶ 78.
37.	The City's agreement with AEA stated:	Objection: relevance and undue prejudice
	The City and Employee Organization	Objections to Evidence 18
	agree to transition from the current partial pre-funding of retiree medical	Disputed: City's cited sourced do not support its
	and dental healthcare benefits (referred to as the "policy method") to prefunding	statement
	of the full Annual Required Contribution (ARC) for the retirec	
	healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the APC over a period of	
	fully funding the ARC over a period of five (5) years beginning June 28, 2009.	
	The Plan's initial unfunded retiree healthcare liability shall he fully	
	amortized over a thirty year period so that it shall be paid by June 30, 2039	
	(closed amortization)The City and Plan members (active employees) shall	
	contribute to funding the ARC in the ratio currently provided under Section	
	3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically,	
	contributions for retiree medical benefits shall be made by the City and members	

N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.	
	Supporting Evidence:	
	 Gurza Dec. ¶ 32 Exh. 40, ΛΕΑ, Section 12.1. 	
38.	The AEA agreement further stated:	Objection: relevance and undue prejudice
	The payments of the full ARC were to be phased in incrementally but: "[B]y	Objections to Evidence 19
	the end of the five year phase-in, the City and plan members shall be	·
	contributing the full Annual Required Contribution in the ratio currently	
	provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal	
	Code."	
	Supporting Evidence:	
	• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.	
39.	The provisions from the AEA agreement	Undisputed
	on payments towards the full ARC is the same or substantially similar to the text	
	in City agreements with the following unions:	
	Association of Building, Mechanical	
	and Electrical Inspectors (ABMEI), Association of Engineers and Architects,	
	IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance	
	Supervisory Personnel (AMSP), City Association of Management Personnel	
	(CAMP), International Brotherhood of Electrical Workers, Local No. 332	
	(IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association,	

ozic i N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence:	
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
10.	The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage. Supporting Evidence: Gurza Dec., ¶ 44, Exhs.	Objection: relevance and undue prejudice Objections to Evidence 22, 23
	21[Firefighters], Exh. 41[SJPOA].	
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.	Objection: relevance and undue prejudice Objections to Evidence 20, 21
	Supporting Evidence:	
	• Gurza Dec., ¶43, Exh. 42, 43	

There are triable issues of material fact. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

4			
5 6	N	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
7	42.	* 44	Undisputed
8		Payments to Retirees") of Measure B states:	
9		The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued,	
10		and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the	
12		benefits authorized herein shall not be funded from plan assets.	
13			
14		Supporting Evidence:	
15		• RJN, Exh. B.	
16	43.	On or around April 12, 1960, the voters	Undisputed
17		ratified Proposition A, which amended the San José Charter to include Section 78b.	
18			
19		Supporting Evidence:	
20		RJN, Exh. E (California)	
21		Assembly Concurrent Resolution No. 17, adopted in	·
23		Assembly January 18, 1961, approving amendment of	
24		Charter of San José to include	
25		Section 78b ("Discretionary Powers of Council Respecting	
26		Retirement") of Article X).	
27	44.	Former San José Charter Section 78b	Disputed as incomplete (material terms missing):
28	<u> </u>	stated:	,
		8	3 CASE NO. 1-12-CV-225926

1 Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 "Anything in Section 78a of the Charter 3 "Anything in Section 78a of the Charter to to the contrary notwithstanding, the the contrary notwithstanding, the Council in 4 Council in its discretion may at any its discretion may at any time, or from time time, or from time to time, by ordinance, to time, by ordinance, amend or otherwise 5 amend or otherwise change the change the retirement plan established by retirement plan established by said said Section 78a or any retirement plan or 6 Section 78a or any retirement plan or plans established pursuant to said Section plans established pursuant to said 7 78a, or adopt or establish a new or different Section 78a, or adopt or established a plan or plans for eligible members of the 8 new or different plan or plans for police or fire department of the City of San eligible members of the police or fire José, for the purpose of providing benefits g department of the City of San José" ... for members of any such plan or plans in excess of those benefits authorized or "all as the Council may deem proper and 10 subject to such conditions, restrictions, required by the provisions of said Section limitations, terms and other provisions 11 89a" ... "all as the Council may deem as the Council may deem proper;..." proper and subject to such conditions, 12 restrictions, limitations, terms and other provisions as the Council may deem proper; 13 Supporting Evidence: provided, however, that: 14 RJN, Exh. E (California (1) The Council shall nat decrease any of said Assembly Concurrent benefits below those which Section 78a 15 Resolution No. 17, adopted in makes mandatory, nor otherwise deprive Assembly January 18, 1961, any member of any such plan of any rights 16 approving amendment of to which he would be entitled under Section Charter of San José to include 78a...." 17 Section 78b ("Discretionary (Emphasis added.) 18 Powers of Council Respecting Retirement") of Article X). 19 Supporting Evidence: 20 • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in 21 Assembly January 18, 1961, approving 22 amendment of Charter of San José to include Section 78b ("Discretionary Powers 23 of Council Respecting Retirement") of Article X). 24 45. The ballot argument in favor of Disputed as incomplete 25 Proposition A stated: 26 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A DISCRETIONARY POWERS TO THE also says: 27 CITY COUNCIL! It is good YOUR POLICE AN FIREMEN NEED government to allow the City Council to 28 CASE NO. 1-12-CV-225926

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	be responsible for investigating problems and deciding how to solve	PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the
	them. [¶] THIS AMENDMENT IS	members of your police and fire departments. The
	SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very	purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's
	capable City Attorney."	families. San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities
	Supporting Evidence:	provide survivor benefits.
	RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Dramosition A. to be submitted.)	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! <i>In order</i>
	Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960,	to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the
	including "Argument in Favor	City Charter. In other words, this amendment merely unties the hands of your City Council.
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matters just like this. A second reason is that the
		policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."
		(Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be
		submitted to the Electors of the City of San José, April 12, 1960, including "Argument
46.	As adopted by the voters in 1965, the	in Favor of Proposition A"). Undisputed
	San José City Charter states at Section 1500: Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation,	
	establishment and maintenance of a	
	retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all	,

86 CASE NO.

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

CASE NO. 1-12-CV-225926

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		provisions of this Section.
		(Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The following acts of the Council shall be by	Undisputed (although this is not the entirety Section 602)
ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."		
	ordinance.	
	Supporting Evidence:	
	• RJN, Exh. A	
50.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
	Supporting Evidence:	
	• RJN, Exh. A	•
	- 4504.75 #//5110-02	
51.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	• Gurza Decl, Exhs. 54, 55	• Gurza Dec., Exhs. 54

1	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
ha-ha	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
52.	For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." Supporting Evidence: RJN, Exh. C.	Full text: "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, a survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."
		(Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. C
53.	Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.	Disputed: cited sources only demonstrate suspended distributions in fiscal years 20 2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)
	Supporting Evidence:	
	• RJN., Exhs. L, M, N	
54.	For the Police and Fire Retirement	Objection: irrelevant and unduly prejudicial
	System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the	Objections to evidence 24
	Board shall make distributions in accordance with such methodology"	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
• RJN., Exh. D.	
55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retirce Benefit Reserve Of The Police and Fire Department Retirement Fund."	Objection: irrelevant and unduly prejudicial Objections to evidence 25
Supporting Evidence:	
• RJN., Exh. N.	
v.	
56. Beginning in 2010, the City Council amended the Municipal Code for the	Objection: irrelevant and unduly prejudicial
Police and Fire retirement plan to provide that "there shall be no distribution during	Objections to evidence 24
calendar years 2010, 2011, 2012 or	·
during calendar year 2013" (Municipal Code section 3.36.580(D)(2)	
Supporting Evidence:	
• RJN., Exh. D.	
57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized	Undisputed as to Federated City Employees Retirement System
the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.	
Supporting Evidence:	
RJN, Exh. O [November 22, 1985 Letter from Coates,	
Herfurth & England, to Edward F. Overton, Retirement and	
Benefits Administrator, re: SB650 Study]; Gurza Dec.,	
Exh 59 [Actuarial Valuation	
Report, City of San José Police and Fire Department Relirement Plan, as of June 30, 2012, al p.	
	89 CASE NO. 1-12-CV-2

Out 1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	5 (showing plan overfunded at 114.8% as of June 30, 2001]	
58.	In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	Undisputed as to Federated City Employees Retirement System
	Supporting Evidence:	
	• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
59.	In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.	Undisputed as to Federated City Employees Retirement System
	Supporting Evidence:	
	• Gurza Dec., Exhs. 44, 45, 46, 47, 48.	

4. Promissory And Equitable Estoppel

AFSCME eighth cause of action.

Issue 4A: San José Charter §1506-A (Employee Additional Pension Contributions)

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1506-A is not a violation of promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded liabilities. The City made no legally binding promise to pay for all pension plan unfunded liabilities.

J	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1.	Section 1506-A ("Current Employees") of Measure B states:	Undisputed
(a)	"Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).	
(b)	Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.	
(c)	The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.	
	d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police	·
	and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.	
111	e) The compensation adjustment shall be treated in the same manner as any other	
	employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis	
	through payroll deductions pursuant to applicable Internal Revenue Code	
	Sections. The additional contributions shall be subject to withdrawal, return	
	and redeposit in the same manner as any other employee contributions.	
	Supporting Evidence: Defendant's Request for	
	Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
2.	On or around April 12, 1960, the voters	Undisputed
	ratified Proposition A, which amended the San José Charter to include Section	
	78b. ·	
	Supporting Evidence:	
	 RJN, Exh. E (California Assembly Concurrent 	
	Resolution No. 17, adopted in Assembly January 18, 1961,	
	approving amendment of	
		92 CASE NO. 1-12-CV-225926 NT OF UNDISPUTED FACTS

2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3 4 5	Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
6 7 8 9 10 11 12 13 14 15 16 17 18	3. Former San José Charter Section 78b stated: "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;" Supporting Evidence: RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in	Disputed as incomplete (material terms missing). In relevant part, the section read: "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans in excess of those henefits authorized or required by the provisions of said Section 89a" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that: (1) The Council shall not decrease any of said benefits helow those which Section 78a
21 22	Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting	makes mandatory, <i>nor otherwise deprive</i> any member of any such plan of any rights to which he would be entitled under Section 78a"
23 24	Retirement") of Article X).	(Emphasis added.)
25		Supporting Evidence:
26		• City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving
27 28	·	amendment of Charter of San José to include Section 78b ("Discretionary Powers

93 CASE NO.

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

, CASE NO. 1-12-CV-225926

 The ballot argument in favor of Proposition A stated: "THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE 	of Council Respecting Retirement") of Article X). Disputed as incomplete
Proposition A stated: "THIS AMENDMENT GIVES	Disputed as incomplete
city council! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney." Supporting Evidence: RJN, Exh. F (Ballot Pamphlet for Charter Amendment — Proposition A, to be submitted to the Electors of the City of	"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed the ballot by the City Council at the request of members of your police and fire departments purpose of this amendment is to enable the Council to take legal steps to provide survive benefits for your policemen's and firemen's families. San Jose Policemen and Firemen de have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits. SURVIVOR BENEFITS ARE PROHIBITED PRESENT IN THE CITY CHARTER! In or to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the
San José, April 12, 1960, including "Argument in Favor of Proposition A").	City Charter. In other words, this amendmen merely unties the hands of your City Council NO SPECIFIC PLAN IS PROPOSED IN THE
	AMENDMENT!
	One reason is that the City Council should hat broad powers to investigate and decide on mainst like this. A second reason is that the
	policemen ond firemen have confidence that City Council will enact fair and reasonable provisions."
	(Emphasis added.)
	Supporting Evidence:
	City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to
	submitted to the Electors of the City of José, April 12, 1960, including "Argur in Favor of Proposition A").
5. As adopted by the voters in 1965, the San José City Charter states at Section	Undisputed;

1 Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 1500: 3 However, Title of Section 1500 reads: "Duty to Except as hereinafter otherwise Provide Retirement System." provided, the Council shall provide, by Supporting Evidence: ordinance or ordinances, for the creation, 5 • RJN, Exh. G (1965 Charter) establishment and maintenance of a retirement plan or plans for all officers 6 and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other 8 provisions of this Article, the Council may at any time, or from time to time, 9 amend or otherwise change any retirement plan or plans or adopt or 10 establish a new or different plan or plans for all or any officers or 11 employees." 12 13 **Supporting Evidence:** 14 RJN, Exh. G (1965 Charter) (emphasis added). 15 16 As adopted by the voters in 1965, the Disputed as incomplete San José City Charter states at Section 17 * The Title of Section 1503 is: "Continuance of 1503: Existing Retirement Systems" 18 Any and all retirement system or (Emphasis added) systems, existing upon adoption of this 19 * It reads, in its entirety: Charter, for the retirement of officers or employees of the City, adopted under 20 Any and all retirement system or systems, existing any law or color of any law, including upon adoption of this Charter, for the retirement but not limited to those retirement of officers or employees of the City, adopted systems established by Parts 1, 2 and 4 under any law or color of any law, including but 22 of Chapter 9 of Article II of the San José not limited to those retirement systems established Municipal Code, are hereby confirmed, 23 by Parts 1, 2 and 4 of Chapter 9 of Article II of the validated and declared legally effective San Jose Municipal Code, are hereby confirmed, 24 and shall continue until otherwise validated and declared legally effective and shall provided by ordinance. ... However, continue until otherwise provided by ordinance. 25 subject to other provisions of this The foregoing provisions of this Section shall Article, the Council shall at all times operate to supply such authorization as may be 26 have the power and right to repeal or necessary to validate any such retirement system amend any such retirement system or 27 or systems which could have been supplied in the systems, and to adopt or establish a new Charter of the City of San Jose or by the people of

21

28

or different plan or plans for all or any

N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."	the City at the time of adoption or amendme any such retirement system or systems. How subject to other provisions of this Article, th Council shall at all times have the power and to repeal or amend any such retirement system.
 Supporting Evidence: RJN, Exh. G (1965 Charter) (emphasis added). 	systems, and to adopt or establish a new or different plan or plans for all or any officers employees, it being the intent that the forego sections of this Article shall prevail over the provisions of this Section.	
		(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this	Undisputed
	Charter, shall be fixed by the Council."	
	Supporting Evidence:	
• RJN, Exh. A.		
	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by	Undisputed (although this is not the entirety section 602)
	specific provision of this Charter or by ordinance."	
	Supporting Evidence:	
	• RJN, Exh. A	
9.	City Charter section 1500 states:	Objection: irrelevant; asked and answered
"Except as hereinafter otherwisc provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	(substance of Section 1500 addressed in pr paragraph)	

P	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence:	
	• RJN, Exh. A	
.10.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSCME's case, the City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	• Gurza Deel, Exhs. 54, 55	Gurza Dec., Exhs. 54
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
11.	In 2010, a Coalition of City unions	Objection: relevance and undue prejudice
	made a proposal to the City which stated:	Objections to Evidence 2-5
	5.1.2. Additional Retirement	Additional Supporting Evidence:
	Contribution.	• Allen Dec., ¶15
	Effective June 27, 2010 through	
	June 28, 2011, all employees will make additional retirement contributions in an amount	
	equivalent to 10% of total compensation effective June 27,	
	2010. The amounts so contributed will be applied to	
	subsidize and thus reduce the	
	prior service contributions that the City would otherwise be	
	required to make. The parties specifically understand that this	·
	agreement neither alters nor	
	conflicts with the City Charter Section 1505(c) because under	
	this agreement, employees will be subsidizing the City's	
	Section 1505(c) required contribution.	
	Conditudgon.	
	Supporting Evidence:	
	• Gurza Dec.,¶ 16-19, Exh. 2.	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
12.	Other union proposals, including proposals by the SJPOA and lAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.	Objection: relevance and undue prejudice Objections to Evidence 2-5 Additional Supporting Evidence:
		• Allen Dec., ¶15
	Supporting Evidence:	
13.	• Gurza Dec.,¶17, 18, Exhs. 3-6. For the period 2010-2011, the following	
	six unions agreed that their members would pay additional ongoing and one	Objection: relevance and undue prejudice Objections to Evidence 11, 12
	time employee pension contributions, and accept wage reductions, totaling	Additional Supporting Evidence:
	approximately 10% during fiscal year 2010-2011 to be used to defray pension	• Allen Dec., ¶15
	plan unfunded liabilities (except the POA agreed only to a 5.25%. one time additional pension contribution):	
		•
	 Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), 	
	Association of Maintenance Supervisory Personnel (AMSP)	•
 (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). 		
	Supporting Evidence:	
• Gurza Dec., ¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.		

Oleva Nadolik	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
14.	For the period 2010-2011, the following unions either agreed to a wage reduction	Objection: relevance and undue prejudice
	or the City imposed a wage reduction:	Objections to Evidence 11, 13
	•	Additional Supporting Evidence:
	Association of Building, Mechanical	• Allen Dec., ¶15
	and Electric Inspectors (ABMEI)Association of Legal Professionals	Andresed, #15
	(ALP).	
	Executive Management and	
	Professional Employees (Unit 99), and	
	other unrepresented employees.	
	Supporting Evidence:	
	• Gurza Dec.,¶25, Exhs. 9, 13,	
	32, 33.	
15.	The 2010-2011 Agreement MOA	Objection: relevance and undue prejudice
	between the City and AEA, states at Section 10.1.1:	
	Section 10.1.1.	Objections to Evidence 11, 14
	On-Going Additional Retirement	
	Contributions. Effective June 27, 2010,	
	all employees who are members of the	
	Federated City Employees' Retirement System will make additional retirement	:
	contributions in the amount of 7.30% of	
	pensionable compensation, and the	
	amounts so contributed will be applied	
	to reduce the contributions that the City would otherwise be required to make for	
	the pension unfunded liability, which is	
	defined as all costs in both the regular	
	retirement fund and the cost-of-living	
	fund, except current service normal costs in those funds. This additional	
	employee retirement contribution would	
	be in addition to the employee retirement	
	contribution rates that have been	
	approved by the Federated City	
	Employees' Retirement System Board. The intent of this additional retirement	
	contribution by employees is to reduce	
	the City's required pension retirement	
	contribution rate by a commensurate	;

.	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
eerte erî den	7.30% of pensionable compensation, as illustrated below	
	Supporting Evidence: • Gurza Dec.,¶27, Exh, 11.	
16.	The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability" (Section 10.1.2)	Objection: relevance and undue prejudice Objections to Evidence 11, 15
	Supporting Evidence: • Gurza Dec.,¶28, Exh, 11.	
17.	The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (Id. at Section 10.1.4))	Objection: relevance and undue prejudice Objections to Evidence 11, 14
	Supporting Evidence: • Gurza Dec.,¶27, Exh, 11	
18.	The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated	Objection: relevance and undue prejudice Objections to Evidence 11, 15
	1	00 CASE NO. 1-12-CV-

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code." • Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), • Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) • City Association of Management Personnel (CAMP) • International Brotherhood of Electrical Workers, Local 332 (IBEW) • International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) • San José Police Officers Association (plaintiff in the SJPOA case). Supporting Evidence:	Supporting Evidence
• Gurza Dec.,¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
 19. In 2011, the City reached agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012: Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management 	Objection: relevance and undue prejudice Objections to Evidence 11, 16
Personnel (CAMP)	01 CASE NO. 1-12-CV-

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
 International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). International Association of Firefighters, Local 230; Supporting Evidence: Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34. 	
20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012. Supporting Evidence: Gurza Dec., ¶ 26, Exhs. 20, 28	 Undisputed, but for clarification purposes: Effective September 18, 2011, CEO members realized a 12.16% wage reduction Effective June 26, 2011, MEF members realized a 12.01% wage reduction
	Supporting Evidence:
	• Gurza Dec., Exhs. 20, 28
21. For Federated employees, the Municipal Code provides: "Notwithstanding any	Undisputed
other provisions of this Part 6 or of Chapter 3.44, members of this system	Note: this section was added to the Municipal Code around June 2010 and became effective July
shall make such additional retirement	2010
contributions as may be required by resolution adopted by the city council or	Supporting Evidence:
by executed agreement with a	• AFSCME RJN, Exh. F
recognized bargaining unit." (Municipal Code 3.28.755)	
Supporting Evidence:	·
R.JN, Exh. C, (Municipal Code,	
Chapter 3.28).	

A	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Under the Municipal Code for Police and Fire Plan employees. • Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.36.1525(A).) • Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).)	Objection: relevance and undue prejudice Objections to Evidence 24
	Supporting Evidence:	·
٠.	 RJN, Exh. D, (Municipal Code, Chapter 3.36). 	
	·	

4

5

7

9

8

10

11 12

13

14

15

16

17

18

19

20

21 22

23

24

25 26

27

28

Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence

23. San José Charter Section 1512-A states:

"Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."

Undisputed

There are triable issues of material fact. Therefore, Defendants are not entitled to

Note: this section was added by Measure B

Supporting Evidence:

- RJN, Exh. B.
- On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Undisputed

Supporting Evidence:

RJN, Exh. E (California
 Assembly Concurrent
 Resolution No. 17, adopted in
 Assembly January 18, 1961,
 approving amendment of
 Charter of San José to include
 Section 78b ("Discretionary
 Powers of Council Respecting
 Retirement") of Article X).

Disputed as incomplete (material terms missing):

stated:

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance,

25. Former San José Charter Section 78b

amend or otherwise change the

"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by

104

CASE NO. 1-12-CV-225926

1 Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 retirement plan established by said said Section 78a or any retirement plan or 3 Section 78a or any retirement plan or plans established pursuant to said Section plans established pursuant to said 78a, or adopt or establish a new or different 4 Section 78a, or adopt or established a plan or plans for eligible members of the 5 new or different plan or plans for police or fire department of the City of San eligible members of the police or fire José, for the purpose of providing benefits 6 department of the City of San José" ... for members of any such plan or plans in "all as the Council may deem proper and excess of those benefits authorized or subject to such conditions, restrictions, required by the provisions of said Section limitations, terms and other provisions 8 89a" ... "all as the Council may deem as the Council may deem proper:..." proper and subject to such conditions, 9 restrictions, limitations, terms and other provisions as the Council may deem proper; 10 Supporting Evidence: provided, however, that: RJN, Exh. E (California 11 (1) The Council shall not decrease any of said Assembly Concurrent benefits below those which Section 78a 12 Resolution No. 17, adopted in makes mandatory, nor otherwise deprive Assembly January 18, 1961, any member of any such plan of any rights 13 approving amendment of to which he would be entitled under Section Charter of San José to include 78a...." 14 Section 78b ("Discretionary (Emphasis added.) Powers of Council Respecting 15 Retirement") of Article X). 16 **Supporting Evidence:** 17 City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in 18 Assembly January 18, 1961, approving amendment of Charter of San José to 19 include Section 78b ("Discretionary Powers 20 of Council Respecting Retirement") of Article X). 21 26. The ballot argument in favor of Disputed as incomplete 22 Proposition A stated: "THIS AMENDMENT GIVES 23 The ballot argument in favor of Proposition A DISCRETIONARY POWERS TO THE also says: 24 CITY COUNCIL! It is good government to allow the City Council to 'YOUR POLICE AN FIREMEN NEED 25 be responsible for investigating PROPOSITION A! Proposition A was placed on problems and deciding how to solve the ballot by the City Council at the request of the 26 them. [¶] THIS AMENDMENT IS members of your police and fire departments. The SIMPLE! Leave all the technical details purpose of this amendment is to enable the City 27 up to your City Council. They have a Council to take legal steps to pravide survivor 28 staff to assist them including a very benefits for your policemen's and firemen's 105 CASE NO. 1-12-CV-225926

1	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	capable City Attorney." Supporting Evidence:	families. San Jose Policemen and Firemen do no have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
 RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to he submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor 	SURVIVOR BENEFITS ARE PROHIBITED A PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.	
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matter just like this. A second reason is that the
	policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."	
		(Emphasis added.)
		Supporting Evidence:
	• City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to b submitted to the Electors of the City of Sa José, April 12, 1960, including "Argumen in Favor of Proposition A").	
27. As adopted by the voters in 1965, the San José City Charter states at Section 1500: Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or	Undisputed	
	However, Title of Section 1500 reads: "Duty to Provide Retirement System."	
	Supporting Evidence:	
	• RJN, Exh. G (1965 Charter)	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
plans for all or any officers or employees."	# 15 C
 Supporting Evidence: RJN, Exh. G (1965 Charter) (emphasis added). 	
28. As adopted by the voters in 1965, the San José City Charter states at Section 1503: Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section." Supporting Evidence: • RJN, Exh. G (1965 Charter).	Disputed as incomplete * The Title of Section 1503 is: "Continuance of Existing Retirement Systems" (Emphasis added.) * It reads, in its entirety: Any and all retirement system or systems, exist upon adoption of this Charter, for the retiremost of officers or employees of the City, adopted under any law or color of any law, including be not limited to those retirement systems establis by Parts 1, 2 and 4 of Chapter 9 of Article II of San Jose Municipal Code, are hereby confirmed validated and declared legally effective and she continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in Charter of the City of San Jose or by the people the City at the time of adoption or amendment any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and reto repeal or amend any such retirement systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoin sections of this Article shall prevail over the provisions of this Section. (Emphasis added) Supporting Evidence: City's RJN, Exh. G (1965 Charter) (emphasis added).

N	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety Section 602)
_	Supporting Evidence: • RJN, Exh. A	
31.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in prev paragraph)
	Supporting Evidence: • RJN, Exh. A	
32.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, City Council has only implement the climination of the SRBR.
	Supporting Evidence:	
	• Gurza Decl, Exhs. 54, 55	Supporting Evidence:

shall be made by the City and the members in the ratio of one-to-one." Supporting Evidence: RJN, Exh. C. 34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare		g Party's Undisputed Material s and Supporting Evidence	Opposing Party's Response and Supporting Evidence
"Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one." Supporting Evidence: RJN, Exh. C. 34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare		•	·
shall be made by the City and the members in the ratio of one-to-one." Supporting Evidence: RJN, Exh. C. 34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare	33. Muni	cipal Code §3.28.385(C) provides:	Undisputed
Supporting Evidence: • RJN, Exh. C. 34. Municipal Code § 3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: • RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: • Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare	shall	be made by the City and the	Note: this section was added to the Municipal Code around May 2011
 ◆ RJN, Exh. C. 34. Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." <u>Supporting Evidence:</u> • RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: • Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcarc 		·	
"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: ■ RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: ■ Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare Objections to Evidence 24 Undisputed When MEF and CEO reached an agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare	<u>Supr</u> •		
provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: RJN, Exh. D. 135. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 136. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare	34. Mun	cipal Code §3.36.575(D) provides:	Objection: relevance and undue prejudice
Supporting Evidence: RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare Bupporting Evidence: Undisputed Undisputed Undisputed Undisputed	provi	ded through the medical benefits ant shall be made by the city and the	Objections to Evidence 24
 RJN, Exh. D. 35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcarc Disputed When MEF and CEO reached an agreement with respect to funding of they did so in part because of the attendant circumstances: a guar attendant circumstances. 			
memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcarc Tisputed When MEF and CEO reached an agreement with respect to funding of they did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances: a guaranteed agreement of the did so in part because of the attendant circumstances agreement of the did so in part because of the attendant circumstances.	<u> 5up</u>		
• Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. 36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare • Gurza Dec., ¶ 35-37, Exhs. 36, 37, 38. Disputed When MEF and CEO reached an agreement year, to fund up to 50% of the unfunded liabilities of retiree healthcare	mem attac the C	orandum to the City Council, hing actuarial reports, concerning ASB standards for Other Post-	Undisputed
36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare 36. Beginning in 2009, the City reached agreement with the following City When MEF and CEO reached an agreement year, to fund up to 50% of the unfunded liabilities of retiree healthcare attendant circumstances: a guar	Supr	oorting Evidence:	
agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare agreement with the following City When MEF and CEO reached an agr 2009 with respect to funding of they did so in part because of the attendant circumstances: a guar	•	70	
unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare When MEF and CEO reached an agreement of the property of the did so in part because of the attendant circumstances; a guarantees of the property o			Disputed
each year, to fund up to 50% of the unfunded liabilities of retiree healthcare they did so in part because of the attendant circumstances; a guar	unio	ns for employees to make annual	When MEF and CEO reached an agreement 2009 with respect to funding of the AR
, agendang chountstances, a guar	each	year, to fund up to 50% of the	they did so in part because of the follow
increase for the remaining year	costs		increase for the remaining year of the contract, a healthy economy, and the he
and Electrical Inspectors (ABMEI), financial situation of the City.			financial situation of the City. At the to

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Architects, IFPTE Local 21 (AEA Units 41/42 and 43),Association of Maintenance Supervisory Personnel (AMSP),City Association of Management Personnel (CAMP),International Brotherhood of Electrical Workers, Local No. 332 (IBEW);Municipal Employees' Federation, AFSCME Local 101 (MEF)Confidential Employees Association, AFSCME Local 101 (CEO);International Association of Firefighters, Local 230;San José Police Officers Association.	AFSCME was unaware of the approximately 20% reduction in staffing and drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that the City would affect in the future. The effect of these changes made a material impact on the significance of the 2009 agreement, and resulted in significantly greater costs by active employees under the 2009. At the time, AFSCME was unaware of the City's future plans to design Measure B and put it to the voters. As a result of these intervening events, the 2009 agreement was never fully implemented by the City and, indeed, key provisions have not been abandoned by the parties. It is
• Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.	AFSCME's position that the parties are no longer operating under the agreement, if they ever were.
	Supporting Evidence: Allen Decl, ¶17; Doonan Decl. ¶ 78.
37. The City's agreement with AEA stated:	Objection: relevance and undue prejudice
The City and Employee Organization	Objections to Evidence 18
partial pre-funding of retiree medical	Disputed: City's cited sourced do not support its statement
to as the "policy method") to prefunding of the full Annual Required	
healthcare plan ("Plan"). The transition	
fully funding the ARC over a period of	
The Plan's initial unfunded retiree	
amortized over a thirty year period so	
(closed amortization)The City and Plan members (active employees) shall	
contribute to funding the ARC in the ratio currently provided under Section	
3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically,	
contributions for retiree medical benefits	
	Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),Association of Maintenance Supervisory Personnel (AMSP),City Association of Management Personnel (CAMP),International Brotherhood of Electrical Workers, Local No. 332 (IBEW);Municipal Employees' Federation, AFSCME Local 101 (MEF)Confidential Employees Association, AFSCME Local 101 (CEO);International Association of Firefighters, Local 230;San José Policc Officers Association. Supporting Evidence: • Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41. 37. The City's agreement with AEA stated: The City and Employee Organization agree to transition from the current partial prc-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization)The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section

	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
2	for retiree dental benefits shall be made	
	by the City and members in the ratio of eight-to-three The Municipal Code and/or applicable plan documents shall	
	be amended in accordance with the above.	
	Supporting Evidence:	
	 Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
38.	The AEA agreement further stated:	Objection: relevance and undue prejudice
	The payments of the full ARC were to be phased in incrementally but: "[B]y	Objections to Evidence 19
	the end of the five year phase in, the City and plan members shall be	
	contributing the full Annual Required Contribution in the ratio currently	
	provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code."	
	Supporting Evidence:	-
	 Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	
39.	The provisions from the AEA agreement	Undisputed
	on payments towards the full ARC is the same or substantially similar to the text	
	in City agreements with the following unions:	
	Association of Building, Mechanical	
	and Electrical Inspectors (ABMEI), Association of Engineers and Architects,	
	IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance	
	Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Protherhood of	
	(CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees'	
	Federation, AFSCME Local 101 (MEF);	·.

Ŋ	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<u> </u>	AFSCME Local 101 (CEO).	
	Supporting Evidence:	·
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
40.	The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.	Objection: relevance and undue prejudice Objections to Evidence 22, 23
	• Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].	
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.	Objection: relevance and undue prejudice Objections to Evidence 20, 21
	Supporting Evidence:	
	• Gurza Dec., ¶43, Exh. 42, 43	

I

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A is not a violation of promissory or equitable estoppel and does not breach any duty by Defendants to Plaintiff. The Supplemental Retirec Benefit Reserve was a discretionary benefit. Plaintiffs have no right to continuation of or payments from the SRBR.

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
42.	Section 1511-A ("Supplemental Payments to Retirces") of Measure B states:	Undisputed
	The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirecs in addition to the benefits authorized herein shall not be funded from plan assets.	
	Supporting Evidence: • RJN, Exh. B.	
43.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	Undisputed
	Supporting Evidence:	
	• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
<u> </u>		

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

CASE NO. 1-12-CV-225926

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
 44. Former San José Charter Section 78b stated: "Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;" Supporting Evidence: • RJN, Exh. E (California Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	"Anything in Section 78a of the Charter the contrary notwithstanding, the Coun its discretion may at any time, or from to time, by ordinance, amend or otherw change the retirement plan established said Section 78a or any retirement plan plans established pursuant to said Section 78a, or adopt or establish a new or diffe plan or plans for eligible members of the police or fire department of the City of José, for the purpose of providing bene for members of any such plan or plans excess of those benefits authorized or required by the provisions of said Section 89a" "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and othe provisions as the Council may deem provided, however, that: (1) The Council shall not decrease any of sa benefits below those which Section 78a makes mandatory, nor otherwise deprimany member of any such plan of any right to which he would be entitled under Se 78a" (Emphasis added.) Supporting Evidence: City's RJN, Exh. E (California Asser Concurrent Resolution No. 17, adopted Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Po of Council Respecting Retirement") of Article X).
45. The ballot argument in favor of Proposition A stated:	Disputed as incomplete
"THIS AMENDMENT GIVES	The ballot argument in favor of Proposition

Moving Party's Undisputed Mate Facts and Supporting Evidence	al Opposing Party's Response and Supporting Evidence
DISCRETIONARY POWERS T	THE also says:
CITY COUNCIL! It is good	"YOUR POLICE AN FIREMEN NEED
government to allow the City Co be responsible for investigating	I IOI OSITION A: I Toposition A was placed on
problems and deciding how to so them. [¶] THIS AMENDMENT	
SIMPLE! Leave all the technica	Council to take legal steps to provide survivor
up to your City Council. They h staff to assist them including a ve	families. San Jose Policemen and Firemen do not
capable City Attorney."	have Social Security or any other survivor
	benefits of any kind. Almost all other cities provide survivor benefits.
Supporting Evidence:	SURVIVOR BENEFITS ARE PROHIBITED AT
 RJN, Exh. F (Ballot Par for Charter Amendment Proposition A, to be sub 	PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable
to the Electors of the Ci	CHENNAR ROMOTHE IT IS MACOSSIFICAL APPLICATION S
San José, April 12, 196 including "Argument in	avor merely unties the hands of your City Council.
of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
	One reason is that the City Council should have broad powers to investigate and decide on matters
	just like this. A second reason is that the policemen and firemen have confidence that the
	City Council will enact fair and reasonable provisions."
	(Emphasis added.)
	Supporting Evidence:
	City's RJN, Exh. F (Ballot Pamphlet for
	Charter Amendment – Proposition A, to be submitted to the Electors of the City of San
	José, April 12, 1960, including "Argument in Favor of Proposition A").
AC A. 1 1 1 1 1004	
46. As adopted by the voters in 1965 San José City Charter states at 5	
1500:	
Except as hereinafter otherwise	
provided, the Council shall prov ordinance or ordinances, for the	eation,
establishment and maintenance	
retirement plan or plans for all o	115 CASE NO. 1-12-CV-225926

IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence: • RJN, Exh. G (1965 Charter).	employees, it being the intent that the forego sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added)
		Supporting Evidence:
		• City's RJN, Exh. G (1965 Charter)
		- Ony stant, Dan. o (1705 Charlet)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City	Undisputed
	appointive officers and employees,	
	except as otherwise provide in this Charter, shall be fixed by the Council."	
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety Section 602)
	Supporting Evidence: RJN, Exh. A	
50.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
	Supporting Evidence:	
	• RJN, Exh. A	
51.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case. City Council has only amended the Municipal Code to remove the SRBR.

	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence:	Supporting Evidence: ● Gurza Dec., Exhs. 54
	 Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	• Ailen Dec., ¶21
52.	For the Federated Retirement System, the Municipal Code provided in Section	Disputed as incomplete
	3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to	Full text:
	the city council regarding distribution, if any, of the supplemental retirce benefit reserve" to retirces and their survivors.	"Upon the request of the city council or on it own motion, the board may make
	Further, "[t]he city council, after consideration of the recommendation of	recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to
	the board, shall determine the distribution, if any, of the supplemental	retired members, survivors of members, survivors of retired members. The city
	benefit reserve to said persons."	council, after consideration of the recommendation of the board, shall
	Supporting Evidence: • RJN, Exh. C.	determine the distribution, if any, of the supplemental benefit reserve to said
		persons." (Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. C
53.	Beginning in 2010, City Council	Disputed: cited sources only demonstrate
	resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-	suspended distributions in fiscal years 2 2011 (City RJN, Exh. L) and 2012-2013
	2011, 2011–2012, and 2012–2013.	(City RJN, Exh. M)
	Supporting Evidence:	
	• RJN., Exhs. L, M, N	
	For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the	Objection: irrelevant and unduly prejudicial

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	methodology by the City Council, the Board shall make distributions in accordance with such methodology"	Objections to evidence 24
	Supporting Evidence:	
	• RJN., Exh. D.	
55.	In 2002, the City Council adopted	
	Resolution No. 70822, which approved	Objection: irrelevant and unduly prejudicial Objections to evidence 25
	Department Retirement Fund."	
	Supporting Evidence:	
	• RJN., Exh. N.	
56.	amended the Municipal Code for the	Objection: irrelevant and unduly prejudicial Objections to evidence 24
that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013"		
	(Municipal Code section 3.36.580(D)(2)	
	Supporting Evidence:	
 	• RJN., Exh. D.	
57.	In 1986 when the City Council	Undisputed as to Federated City Employees'
	authorized the Federated SRBR, and in 2001, when the City Council authorized	Retirement System
	the Police and Fire SRBR, the actuaries reported that the City's two pension	
	retirement funds were fully funded.	
	Supporting Evidence:	
	 RJN, Exh. O [November 22, 1985 Letter from Coates, 	
	Herfurth & England, to Edward F. Overton, Retirement and	

Ą	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]	
58.	In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	Undisputed as to Federated City Employees' Retirement System
	Supporting Evidence:	
	 Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities] 	
59.	In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.	Undisputed as to Federated City Employees' Retirement System
	Supporting Evidence:	
	• Gurza Dec., Exhs. 44, 45, 46, 47, 48.	

SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

City's first cause of action

1

2

3

5

Issue 5A: San José Charter §1506-A (Employee Additional Pension Contributions)

There are triable issues of material facts. Therefore, Defendants are not entitled to 6 summary adjudication as a matter of law.

1	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1.	Section 1506-A ("Current Employees") of Measure B states:	Undisputed
(a)	"Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).	·
(b)	Unless they voluntarily opt in to the	
	Voluntary Election Program ("VEP," described herein), Current Employees	
	shall have their compensation adjusted through additional retirement	
	contributions in increments of 4% of	
	pensionable pay per year, up to a maximum of 16%, but not more than	
	50% of the costs to amortize any pension	
	unfunded liabilities, except for any pension unfunded liabilities that may	
	exist due to Tier 2 benefits in the future.	
	These contributions shall be in addition to employees' normal pension	
	contributions and contributions towards retiree healthcare benefits.	
(c)	The starting date for an employee's	
	compensation adjustment under this Section shall be June 23, 2013,	
	regardless of whether the VEP has been	
	implemented. If the VEP has not heen implemented or any reason, the	
	compensation adjustments shall apply to	
7.35	all Current Employees.	
(d)	The compensation adjustment through	

. Tr	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.	
(e)	The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions. Supporting Evidence: Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
2.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	Undisputed
	• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in	
	Assembly January 18, 1961, approving amendment of Charter of San José to include	
	Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).	
J-10	· · · · · · · · · · · · · · · · · · ·	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms mis
	"Anything in Section 78a of the Charter to the contrary notwithstanding, the	"Anything in Section 78a of the Charte the contrary notwithstanding, the Cour
	Council in its discretion may at any time, or from time to time, by ordinance,	its discretion may at any time, or from to time, by ordinance, amend or otherw
	amend or otherwise change the retirement plan established by said	change the retirement plan established
	Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a	said Section 78a or any retirement plan plans established pursuant to said Sect 78a, or adopt or establish a new or diff
	new or different plan or plans for eligible members of the police or fire	plan or plans for eligible members of the police or fire department of the City of
	department of the City of San José"	José, for the purpose of providing bene for members of any such plan or plans
	"all as the Council may deem proper and subject to such conditions, restrictions,	excess of those benefits authorized or required by the provisions of said Sect
	limitations, terms and other provisions as the Council may deem proper;"	89a" "all as the Council may deem proper and subject to such conditions,
		restrictions, limitations, terms and other provisions as the Council may deem provisions
	Supporting Evidence: • RJN, Exh. E (California	provided, however, that:
	Assembly Concurrent Resolution No. 17, adopted in	(1) The Council <i>shall not decrease</i> any of some benefits below those which Section 78.
	Assembly January 18, 1961, approving amendment of	makes mandatory, nor otherwise depri any member of any such plan of any ri
	Charter of San José to include Section 78b ("Discretionary	to which he would be entitled under Se 78a"
	Powers of Council Respecting Retirement") of Article X).	(Emphasis added.)
	,	Supporting Evidence:
		 City's RJN, Exh. E (California Asser Concurrent Resolution No. 17, adopted
		Assembly January 18, 1961, approving amendment of Charter of San José to
		include Section 78b ("Discretionary Po of Council Respecting Retirement") of Article X).
4.	The ballot argument in favor of Proposition A stated:	Disputed as incomplete
	"THIS AMENDMENT GIVES	The ballot argument in favor of Proposition
	1:	23 CASE NO. 1-12-CV-2:

		•
1 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	DISCRETIONARY POWERS TO THE	also says:
	CITY COUNCIL! It is good government to allow the City Council to	"YOUR POLICE AN FIREMEN NEED
4	be responsible for investigating	PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the
5	problems and deciding how to solve them. [¶] THIS AMENDMENT IS	members of your police and fire departments. The
6	SIMPLE! Leave all the technical details up to your City Council. They have a	purpose of this amendment is to enable the City Council to take legal steps to provide survivor
7	staff to assist them including a very	benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not
8	capable City Attorney."	have Social Security or any other survivor
9	Supporting Evidence:	benefits of any kind. Almost all other cities provide survivor benefits.
10	RJN, Exh. F (Ballot Pamphlet)	SURVIVOR BENEFITS ARE PROHIBITED AT
11	for Charter Amendment -	PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable
12	to the Electors of the City of	survivor benefits, it is necessary to amend the City Charter. In other words, this amendment
13	San José, April 12, 1960, including "Argument in Favor	merely unties the hands of your City Council.
14	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
15 16 17		One reason is that the City Council should have broad powers to investigate and decide on matters just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."
19		(Emphasis added.)
20		Supporting Evidence:
21		City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be
22		submitted to the Electors of the City of San José, April 12, 1960, including "Argument
23	5. As adopted by the voters in 1965, the	in Favor of Proposition A"). Undisputed;
24	San José City Charter states at Section	However, Title of Section 1500 reads: "Duty to
25	1500;	Provide Retirement System."
26	Except as hereinafter otherwise provided, the Council shall provide, by	Supporting Evidence:
27 28	ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers	RJN, Exh. G (1965 Charter)
	12	24 CASE NO. 1-12-CV-225926

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

28

to repeal or amend any such retirement system or

-30	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
[Supporting Evidence:	systems, and to adopt or establish a new or different plan or plans for all or any officers of cmployees, it being the intent that the foregoing
	 RJN, Exh. G (1965 Charter) (emphasis added). 	sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added)
		Supporting Evidence:
	•	City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City	Undisputed
	appointive officers and employees, except as otherwise provided in this	
:	Charter, shall be fixed by the Council."	
:	Supporting Evidence:	
:	• RJN, Exh. A.	
	Oir Chart Chart (TD)	
8.	City Charter section 602 states: "The following acts of the Council shall be by	Undisputed (although this is not the entirety of section 602)
	ordinance: (a) Those acts required by	300,001, 302)
	specific provision of this Charter or by ordinance."	
:		
,	Supporting Evidence:	
	RJN, Exh. A	_
9.		Objection: irrelevant; asked and answered
		(substance of Section 1500 addressed in previous paragraph)
	establishment and maintenance of a	
	retirement plan or plans for all officers and employees of the City."	
:	Supporting Evidence:	
	RJN, Exh. A	

	And Adving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
10.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSCME's case, City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	Gurza Decl, Exhs. 54, 55	Gurza Dec., Exhs. 54
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
11.	In 2010, a Coalition of City unions made a proposal to the City which	Objection: relevance and undue prejudice
	stated:	Objections to Evidence 2-5
	5.1.2. Additional Retirement	Additional Supporting Evidence:
	Contribution.	• Allen Dec., ¶15
	Effective June 27, 2010 through June 28, 2011, all employees	
	will make additional retirement	
	contributions in an amount equivalent to 10% of total	
	compensation effective June 27, 2010. The amounts so	
	contributed will be applied to subsidize and thus reduce the	
	prior service contributions that	
	the City would otherwise be required to make. The parties	
	specifically understand that this agreement neither alters nor	
	conflicts with the City Charter	
	Section 1505(c) because under this agreement, employees will	
	be subsidizing the City's Section 1505(c) required	
	contribution.	•
	Supporting Evidence:	
	• Gurza Dec.,¶¶ 16-19, Exh. 2.	
12.	Other union proposals, including	Objection: relevance and undue prejudice
, 2.	proposals by the SJPOA and IAFF, also proposed that employees would pay	Objections to Evidence 2-5

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
additional pension contributions to defray pension plan unfunded pension liabilities.	Additional Supporting Evidence: • Allen Dec., ¶15
Supporting Evidence: • Gurza Dec.,¶17, 18, Exhs. 3-6.	7 Anten Soc., #15
13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%, one time additional pension contribution):	Objection: relevance and undue prejudice Objections to Evidence 11, 12 Additional Supporting Evidence: Allen Dec., ¶15
 Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). 	
Supporting Evidence: • Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:	Objection: relevance and undue prejudice Objections to Evidence 11, 13 Additional Supporting Evidence:
1	28 CASE NO. 1-12-CV

4
• Allen Dec., ¶15
Objection: relevance and undue prejudice
Objections to Evidence 11, 14
·

Moving Party's Un Facts and Suppo	- 141 (1) - 1 月 (1) (1) (1) (1) (1) (1) (1) (1)	Opposing Party's Response and Supporting Evidence
Supporting Evid	ence:	
Gurza Dec	c.,¶27, Exh, 11.	
and AEA, also ag making an addition contribution "in the pensionable compamounts so contribute to reduce the contribution of t	IOA between the City reed to employees and one time pension the amount of 3.53% of the buted will be applied ributions that the City be required to make eriod for the pension" (Section 10.1.2)	Objection: relevance and undue prejudice Objections to Evidence 11, 15
Supporting Evidence	ence:	
Gurza Dec	c.,¶28, Exh, 11.	
17. The 2010-2011 M and AEA stated in	OA between the City	Objection: relevance and undue prejudice
employees paying	additional pension he parties understand	Objections to Evidence 11, 14
that in order to im	plement this ndment must be made	
to the Federated C	City Employees'	
Retirement System ordinance amendi	ng the San Jose	
Municipal Code." 10.1.4))	(ia. at Section	
Supporting Evide	ence:	
Gurza Dec	.,¶27, Exh, 11	
AND THE RESERVE AND THE RESERV	The same of the sa	
18. The City's 2010-2 the following union		Objection: relevance and undue prejudice
connection with enadditional pension	mployees paying contributions "The	Objections to Evidence 11, 15
	ovision, an amendment	
requires an ordina	ne Federated ement System that nce amending the San ode" or "The parties	

! 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3 4 5	understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."	
6 7 8 9	 Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management 	
10 11 12 13 14	Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)	·
15 16 17	San José Police Officers Association (plaintiff in the SJPOA case). Supporting Evidence:	
18	• Gurza Dec.,¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
20	with the following unions for their	Objection: relevance and undue prejudice Objections to Evidence 11, 16
21 22	members to accept an approximate 10% wage reduction for the period 2011-2012:	Sojestone di Friderico II, 10
23	 Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), 	
25 26	Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
27	City Association of Management Personnel (CAMP) International Brotherhood of	- · · · · · · · · · · · · · · · · · · ·

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). International Association of Firefighters, Local 230;	
Supporting Evidence:	
• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.	Undisputed, but for clarification purposes: • Effective September 18, 2011, CEO membrealized a 12.16% wage reduction
Supporting Evidence:	• Effective June 26, 2011, MEF members realized a 12.01% wage reduction
• Gurza Dec., ¶ 26, Exhs. 20, 28	Supporting Evidence: • Gurza Dec., Exhs. 20, 28
21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755) Supporting Evidence:	Undisputed Note: this section was added to the Municipa Code around June 2010 and became effective 2010 Supporting Evidence: • AFSCME RJN, Exh. F
 RJN, Exh. C, (Municipal Code, Chapter 3.28). 	
1	32 CASE NO. I-12-CV-22

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	22. Under the Municipal Code for Police and Fire Plan employees.	Objection: relevance and undue prejudice
4		Objections to Evidence 24
5	Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement	
6	contributions as may be required by	
7	resolution adopted by the city council or by executed agreement with a	
8	recognized bargaining unit." (Municipal Code 3.36.1525(A).)	
9	Police and Fire Plan employees	
0	subject to interest arbitration, "shall make such additional retirement	•
1	contributions for fiscal years 2010-2011 as may be required by executed	
2	agreement with a recognized bargaining unit or binding order of arbitration."	
3	(Municipal Code 3.36.1525(B).)	
4	Supporting Evidence:	
5	 RJN, Exh. D, (Municipal Code, Chapter 3.36). 	
6		
7		
8		
9		
0		
1		
2		
3	·	
4		
5		
6		
7		•
8		

2

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
23.	San José Charter Section 1512-A states:	Undisputed
	"Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."	Note: this section was added by Measure B
	Supporting Evidence:	
	• RJN, Exh. B.	
24.	On or around April 12, 1960, the voters	Undisputed
	ratified Proposition A, which amended the San José Charter to include Section 78b.	
,	Supporting Evidence:	
	RJN, Exh. E (California	
	Assembly Concurrent Resolution No. 17, adopted in	
	Assembly January 18, 1961, approving amendment of	·
	Charter of San José to include Section 78b ("Discretionary	
	Powers of Council Respecting Retirement") of Article X).	
	remement for Atticke A).	
25.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing):
	"Anything in Section 78a of the Charter to the contrary notwithstanding, the	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in
	Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the	its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by

Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence 2 Supporting Evidence retirement plan established by said said Section 78a or any retirement plan or 3 Section 78a or any retirement plan or plans established pursuant to said Section plans established pursuant to said 78a, or adopt or establish a new or different Section 78a, or adopt or established a plan or plans for eligible members of the new or different plan or plans for 5 police or fire department of the City of San eligible members of the police or fire José, for the purpose of providing benefits 6 department of the City of San José" ... for members of any such plan or plans in "all as the Council may deem proper and excess of those benefits authorized or 7 subject to such conditions, restrictions. required by the provisions of said Section limitations, terms and other provisions 89a" ... "all as the Council may deem 8 as the Council may deem proper;..." proper and subject to such conditions, 9 restrictions, limitations, terms and other provisions as the Council may deem proper; 10 Supporting Evidence: provided, however, that: RJN, Exh. E (California 11 (1) The Council shall not decrease any of said Assembly Concurrent benefits below those which Section 78a 12 Resolution No. 17, adopted in makes mandatory, nor otherwise deprive Assembly January 18, 1961, any member of any such plan of any rights 13 approving amendment of to which he would be entitled under Section Charter of San José to include 78a...." 14 Section 78b ("Discretionary (Emphasis added.) Powers of Council Respecting 15 Retirement") of Article X). 16 Supporting Evidence: 17 • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in 18 Assembly January 18, 1961, approving amendment of Charter of San José to 19 include Section 78b ("Discretionary Powers 20 of Council Respecting Retirement") of Article X). 21 26. The ballot argument in favor of Disputed as incomplete 22 Proposition A stated: "THIS AMENDMENT GIVES 23 The ballot argument in favor of Proposition A DISCRETIONARY POWERS TO THE also says: 24 CITY COUNCIL! It is good government to allow the City Council to "YOUR POLICE AN FIREMEN NEED 25 be responsible for investigating PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the problems and deciding how to solve 26 members of your police and fire departments. The them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details purpose of this amendment is to enable the City 27 up to your City Council. They have a Council to take legal steps to provide survivor 28 benefits for your policemen's and firemen's staff to assist them including a very CASE NO. 1-12-CV-225926 135

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
capable City Attorney." Supporting Evidence:	families. San Jose Policemen and Firemen do no have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
• RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").	SURVIVOR BENEFITS ARE PROHIBITED APRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council. NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
	One reason is that the City Council should have broad powers to investigate and decide on mattigust like this. A second reason is that the policemen and firemen have confidence that to City Council will enact fair and reasonable provisians."
	(Emphasis added.)
	Supporting Evidence:
	 City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment - Proposition A, to lead to the Electors of the City of States José, April 12, 1960, including "Argume in Favor of Proposition A").
27. As adopted by the voters in 1965, the	Undisputed
San José City Charter states at Section 1500:	However, Title of Section 1500 reads: "Duty to Provide Retirement System."
Except as hereinafter otherwise provided, the Council shall provide, by	Supporting Evidence:
ordinance or ordinances, for the creation,	RJN, Exh. G (1965 Charter)
establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council	
may at any time, or from time to time,	
amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or	

ı	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	plans for all or any officers or employees."	
	Supporting Evidence:	
	• RJN, Exh. G (1965 Charter) (emphasis added).	
28.	As adopted by the voters in 1965, the	Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance Existing Retirement Systems"
	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added)
	Charter, for the retirement of officers or	* It reads, in its entirety:
	employees of the City, adopted under any law or color of any law, including	Any and all retirement system or systems, existing
	but not limited to those retirement	upon adoption of this Charter, for the retireme of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including bu not limited to those retirement systems establish
	Municipal Code, are hereby confirmed, validated and declared legally effective	by Parts 1, 2 and 4 of Chapter 9 of Article II of
	and shall continue until otherwise	San Jose Municipal Code, are hereby confirmed validated and declared legally effective and sha
	provided by ordinance However, subject to other provisions of this	continue until otherwise provided by ordinance
	Article, the Council shall at all times	The foregoing provisions of this Section shall operate to supply such authorization as may be
	have the power and right to repeal or amend any such retirement system or	necessary to validate any such retirement system or systems which could have been supplied in the
	systems, and to adopt or establish a new	Charter of the City of San Jose or by the people
	or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."	the City at the time of adoption or amendment of any such retirement system or systems. However
		subject to other provisions of this Article, the
		Council shall at all times have the power and rig to repeal or amend any such retirement system
		systems, and to adopt or establish a new or different plan or plans for all or any officers or
	Supporting Evidence:RJN, Exh. G (1965 Charter).	employees, it being the intent that the foregoing
		sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added)
		Supporting Evidence:
		• City's RJN, Exh. G (1965 Charter)

N	loving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	• RJN, Exb. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety Section 602)
	Supporting Evidence: • RJN, Exb. A	
31.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in prevparagraph)
	Supporting Evidence: • RJN, Exb. A	
32. The City Council has enacted some ordinances implementing Measure B. Supporting Evidence:		Disputed: as is relevant to AFSMCE's case, City Council has only implement the elimination of the SRBR.
	Supporting Evidence:	
	Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).	• Gurza Dec., Exhs. 54 • Allen Dec., ¶21
		38 CASE NO. 1-12-CV-2

N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
33.	Municipal Code §3.28.385(C) provides:	Undisputed
	"Contributions for other medical benefits shall be made by the City and the	Note: this section was added to the Municipal Code around May 2011
	members in the ratio of one-to-one."	Supporting Evidence:
	Supporting Evidence: • RJN, Exh. C.	• AFSCME RJN G
34.	Municipal Code §3.36.575(D) provides:	Objection: relevance and undue prejudice
	"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."	Objections to Evidence 24
	Supporting Evidence:	·
	• RJN, Exh. D.	
35.	In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.	Undisputed
	Supporting Evidence:	
	• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	
	37, 36.	
36.	Beginning in 2009, the City reached agreement with the following City	Disputed
	unions for employees to make annual contributions, increasing incrementally	When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC
	each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.	they did so in part because of the following attendant circumstances: a guaranteed satincrease for the remaining year of the
	Association of Building, Mechanical	contract, a healthy economy, and the hea
	and Electrical Inspectors (ABME1), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),	financial situation of the City. At the fin AFSCME was unaware of the approximately 20% reduction in staffing CASE NO. 1-12-CV-225

2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	Association of Maintenance Supervisory Personnel (AMSP),	drastic reductions to compensation (reduced pay, increased health benefit cost, etc.) that
4	City Association of Management Personnel (CAMP),	the City would affect in the future. The effect of these changes made a material
5	International Brotherhood of Electrical Workers, Local No. 332 (IBEW);	impact on the significance of the 2009
6	Municipal Employees' Federation, AFSCME Local 101 (MEF)	agreement, and resulted in significantly greater costs by active employees under the
7	Confidential Employees Association, AFSCME Local 101 (CEO);	2009. At the time, AFSCME was unaware of the City's future plans to design Measure
8	International Association of Firefighters, Local 230;	B and put it to the voters. As a result of these intervening events, the 2009
9	San José Police Officers Association.	agreement was never fully implemented by
10	Supporting Evidence:	the City and, indeed, key provisions have not been abandoned by the parties. It is
11	• Gurza Dec. ¶¶39, Exhs. 21, 39,	AFSCME's position that the parties are no longer operating under the agreement, if
12	40, 41.	they ever were.
13		Supporting Evidence: Allen Decl, ¶17; Doonan Decl, ¶78.
14	37. The City's agreement with ΛEA stated:	Objection: relevance and undue prejudice
15	The City and Employee Organization agree to transition from the current	Objections to Evidence 18
16	partial pre-funding of retiree medical and dental healthcare benefits (referred	Disputed: City's cited sourced do not support its statement
17	to as the "policy method") to prefunding of the full Annual Required	
18	Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition	
19	shall be accomplished by phasing into fully funding the ARC over a period of	
20	five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree	
21	healthcare liability shall be fully amortized over a thirty year period so	
22	that it shall be paid by June 30, 2039 (closed amortization)The City and	
23	Plan members (active employees) shall contribute to funding the ARC in the	
24	ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José	
25	Municipal Code. Specifically, contributions for retired medical benefits	
26	shall be made by the City and members in the ratio of one-to-one. Contributions	
27	for retiree dental benefits shall be made by the City and members in the ratio of	
28	eight-to-threeThe Municipal Code	0 CASE NO. 1-12-CV-225926

ì	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	and/or applicable plan documents shall be amended in accordance with the above.	
	Supporting Evidence:	
	 Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
38.	The AEA agreement further stated:	Objection: relevance and undue prejudice
	The payments of the full ARC were to be phased in incrementally but: "[B]y	Objections to Evidence 19
	the end of the five year phase-in, the City and plan members shall be	
	contributing the full Annual Required Contribution in the ratio currently	
	provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal	
	Code."	
	Supporting Evidence:	
	• Gurza Decl., ¶ 41, Exh. 39,	
	AEA, §12.3.	
39.	The provisions from the AEA agreement on payments towards the full ARC is the	Undisputed
	same or substantially similar to the text	
	in City agreements with the following unions:	
	Association of Building, Mechanical	
:	and Electrical Inspectors (ABMEI), Association of Engineers and Architects,	
	IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance	
	Supervisory Personnel (AMSP), City Association of Management Personnel	
	(CAMP), International Brotherhood of Electrical Workers, Local No. 332	
	(IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF);	
	Confidential Employees Association, AFSCME Local 101 (CEO).	
	Supporting Evidence:	

N	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
40.	The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage. Supporting Evidence: Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh.	Objection: relevance and undue prejudice Objections to Evidence 22, 23
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.	Objection: relevance and undue prejudice Objections to Evidence 20, 21
	Supporting Evidence: • Gurza Dec., ¶43, Exh. 42, 43	
	Guiza Dec., [43, Ext. 42, 43	

2

5

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Opposing Party's Response and Moving Party's Undisputed Material Facts and Supporting Evidence Supporting Evidence Undisputed 42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states: The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets. Supporting Evidence: RJN, Exb. B. 43. On or around April 12, 1960, the voters Undisputed ratified Proposition A, which amended the San José Charter to include Section 78b. **Supporting Evidence:** RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). Disputed as incomplete (material terms missing): 44. Former San José Charter Section 78b stated: "Anything in Section 78a of the Charter "Anything in Section 78a of the Charter to to the contrary notwithstanding, the

143 CASE NO.

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

CASE NO. 1-12-CV-225926

Opposing Party's Response and Moving Party's Undisputed Material Supporting Evidence Facts and Supporting Evidence 2 the contrary notwithstanding, the Council in Council in its discretion may at any 3 time, or from time to time, by ordinance, its discretion may at any time, or from time to time, by ordinance, amend or otherwise amend or otherwise change the 4 change the retirement plan established by retirement plan established by said Section 78a or any retirement plan or said Section 78a or any retirement plan or 5 plans established pursuant to said Section plans established pursuant to said 6 Section 78a, or adopt or established a 78a, or adopt or establish a new or different new or different plan or plans for plan or plans for eligible members of the 7 cligible members of the police or fire police or fire department of the City of San department of the City of San José " ... José, for the purpose of providing benefits 8 "all as the Council may deem proper and for members of any such plan or plans in 9 subject to such conditions, restrictions, excess of those benefits authorized or limitations, terms and other provisions required by the provisions of said Section 10 89a" ... "all as the Council may deem as the Council may deem proper;..." proper and subject to such conditions, 11 restrictions, limitations, terms and other **Supporting Evidence:** provisions as the Council may deem proper; 12 provided, however, that: RJN, Exh. E (California 13 Assembly Concurrent (1) The Council shall not decrease any of said Resolution No. 17, adopted in benefits below those which Section 78a 14 Assembly January 18, 1961, makes mandatory, nor otherwise deprive approving amendment of 15 any member of any such plan of any rights Charter of San José to include to which he would be entitled under Section 16 Section 78b ("Discretionary 78a...." Powers of Council Respecting (Emphasis added.) 17 Retirement") of Article X). 18 Supporting Evidence: 19 City's RJN, Exh. E (California Assembly 20 Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving 21 amendment of Charter of San José to include Section 78b ("Discretionary Powers 22 of Council Respecting Retirement") of Article X). 23 Disputed as incomplete 45. The ballot argument in favor of 24 Proposition A stated: 25 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A DISCRETIONARY POWERS TO THE 26 also says: CITY COUNCIL! It is good "YOUR POLICE AN FIREMEN NEED government to allow the City Council to 27 PROPOSITION A! Proposition A was placed on be responsible for investigating the ballot by the City Council at the request of the 28 problems and deciding how to solve CASE NO. 1-12-CV-225926 144

SEPARATE STATEMENT OF UNDISPUTED PACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

[
2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a	members of your police and fire departments. The purpose of this amendment is to enable the City
5	staff to assist them including a very capable City Attorney."	Council to take legal steps to provide survivar benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not
6	Supporting Evidence:	have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
7	RJN, Exh. F (Ballot Pamphlet)	SURVIVOR BENEFITS ARE PROHIBITED AT
8	for Charter Amendment – Proposition A, to be submitted	PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reosonable
10	to the Electors of the City of San José , April 12, 1960, including "Argument in Favor	survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
11	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
13	·	One reason is that the City Council should have broad powers to investigate and decide on matters
14		just like this. A second reason is that the policemen and firemen have confidence that the
15		City Council will enact fair and reasonable provisions."
		(Emphasis added.)
17		Supporting Evidence:
18 19		City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be
20		submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").
21	46. As adopted by the voters in 1965, the	Undisputed
22	San José City Charter states at Section 1500:	
23	Except as hereinafter otherwise provided, the Council shall provide, by	
24	ordinance or ordinances, for the creation,	
25	establishment and maintenance of a retirement plan or plans for all officers	
26	and employees of the City. Such plan or	
27	plans need not be the same for all officers and employees. Subject to other	
28	provisions of this Article, the Council	_\(\sigma_1\)
	14	
	SEPARATE STATEMENT IN SUPPORT OF DEFENDANTS' MOT	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."	
	Supporting Evidence:	
	• RJN, Exh. G (1965 Charter) (emphasis added).	
47.	As adopted by the voters in 1965, the	Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of
	Any and all retirement system or	Existing Retirement Systems" (Emphasis added)
	systems, existing upon adoption of this Charter, for the retirement of officers or	* It reads, in its entirety:
	employees of the City, adopted under any law or color of any law, including	Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement
	but not limited to those retirement systems established by Parts 1, 2 and 4	of officers or employees of the City, adopted under any law or color of any law, including but
	of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed,	not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the
	validated and declared legally effective and shall continue until otherwise	San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall
	provided by ordinance However, subject to other provisions of this	continue until otherwise provided by ordinance.
	Article, the Council shall at all times have the power and right to repeal or	The foregoing provisions of this Section shall operate to supply such authorization as may be
	amend any such retirement system or systems, and to adopt or establish a new	necessary to validate any such retirement system or systems which could have been supplied in the
	or different plan or plans for all or any	Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of
	officers or employees, it being the intent that the foregoing sections of this Article	any such retirement system or systems. However, subject to other provisions of this Article, the
	shall prevail over the provisions of this Section."	Council shall at all times have the power and right to repeal or amend any such retirement system or
		systems, and to adopt or establish a new or different plan or plans for all or any officers or
	Supporting Evidence:RJN, Exh. G (1965 Charter).	employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.
IL		pro intono or ano nocaon.

ì	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The following acts of the Council shall be by	Undisputed (although this is not the entirety of Section 602)
	ordinance: (a) Those acts required by	
	specific provision of this Charter or by ordinance."	
		; ;
	Supporting Evidence:	
	• RJN, Exh. A	
50.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
	retirement plan or plans for all officers	
	and employees of the City."	
	Supporting Evidence:	
	• RJN, Exh. A	
51.	The City Council has enacted some	Disputed: as is relevant to AFSMCE's case, t
ordinances implementing Measure B.	City Council has only amended the Municipal Code to remove the SRBR.	
	Supporting Evidence:	Supporting Evidence:
	• Gurza Decl, Exhs. 54, 55	Gurza Dec., Exh. 54

Ň	oving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
	For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." Supporting Evidence: RJN, Exh. C.	Disputed as incomplete Full text: "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retirce benefit reserve to retired members, survivors of members, and survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." (Emphasis added.)
		Supporting Evidence: • City's RJN, Exh. C
	Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013. Supporting Evidence:	Disputed: cited sources only demonstrate suspended distributions in fiscal years 201 2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)
\$ S 1' H	• RJN., Exhs. L, M, N For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) tated: "Upon the approval of the nethodology by the City Council, the Board shall make distributions in accordance with such methodology"	Objection: irrelevant and unduly prejudicial Objections to evidence 24

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

n.	Aoving Party's Undisputed Material Facts and Supporting Evidence	
	Supporting Evidence:	
	• RJN., Exh. D.	
55.	In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."	Objection: irrelevant and unduly prejudicial Objections to evidence 25
	Supporting Evidence:	
	• RJN., Exh. N.	
56.	Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013" (Municipal Code section 3.36.580(D)(2)	Objection: irrelevant and unduly prejudicial Objections to evidence 24
	Supporting Evidence: • RJN., Exh. D.	
57.	In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.	Undisputed as to Federated City Employees' Retirement System
	Supporting Evidence:	
	• RJN, Exh. O [November 22,	
	1985 Letter from Coates, Herfurth & England, to Edward	
	F. Overton, Retirement and Benefits Administrator, re:	
	SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police	
	and Fire Department Retirement	·

N	Aoving Party's Undisputed Material	Opposing Party's Response and
- # 1 · ·	Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001]	Supporting Evidence
58.	In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	Undisputed as to Federated City Employee Retirement System
	Supporting Evidence:	
	• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
59.	In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.	Undisputed as to Federated City Employee Retirement System
	Supporting Evidence:	
	 Gurza Dec., Exhs. 44, 45, 46, 47, 48. 	

.

3

5

City's second cause of action

Issue 6A: San José Charter §1506-A (Employee Additional Pension Contributions)

There are triable issues of material facts. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 8 l. Section 1506-A ("Current Employees") Undisputed 9 of Measure B states: 10 "Current Employees" means employees of the City of San José as of the 11 effective date of this Act and who are 12 not covered under the Tier 2 Plan (Section 8). 13 Unless they voluntarily opt in to the 14 Voluntary Election Program ("VEP," described herein), Current Employees 15 shall have their compensation adjusted through additional retirement 16 contributions in increments of 4% of pensionable pay per year, up to a 17 maximum of 16%, but not more than 18 50% of the costs to amortize any pension unfunded liabilities, except for any 19 pension unfunded liabilities that may exist due to Tier 2 benefits in the future. 20 These contributions shall be in addition to employees' normal pension 21 contributions and contributions towards 22 retiree healthcare benefits. The starting date for an employee's 23 compensation adjustment under this 24 Section shall be June 23, 2013, regardless of whether the VEP has been 25 implemented. If the VEP has not been implemented or any reason, the 26 compensation adjustments shall apply to all Current Employees. 27 The compensation adjustment through 28

egajis i. Avgovj	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.	
(e)	The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.	
	Supporting Evidence:	
	Defendant's Request for	
	Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
	O 14 1110 1000 H	
2.	On or around April 12, 1960, the voters ratified Proposition A, which amended	Undisputed
	the San José Charter to include Section 78b.	
		·
	• RJN, Exh. E (California	
	Assembly Concurrent Resolution No. 17, adopted in	
	Assembly January 18, 1961, approving amendment of	
	Charter of San José to include Section 78b ("Discretionary	
	Powers of Council Respecting Retirement") of Article X).	

Moving Party's Undispu Facts and Supporting		Opposing Party's Response and Supporting Evidence
CITY COUNCIL! It is	~	also says:
government to allow the be responsible for invest	_	"YOUR POLICE AN FIREMEN NEED
problems and deciding h		PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the
them. [¶] THIS AMEN SIMPLE! Leave all the		members of your police and fire departments. The
up to your City Council.		purpose of this amendment is to enable the City Council to take legal steps to provide survivar
staff to assist them inclu capable City Attorney."	ding a very	benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not
		have Social Security or any other survivor
Supporting Evidence:		benefits of any kind. Almost all other cities provide survivor benefits.
 RJN, Exb. F (B) for Charter Am Proposition A, 	endment –	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order
to the Electors		to allow the City Council to adapt reasonable
San José , April including "Argi		survivor benefits, it is necessary to amend the City Charter. In other words, this amendment
of Proposition		mercly unties the hands of your City Council.
		NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matters
		just like this. A second reason is that the policemen and firemen have confidence that the
		City Council will enact fair and reasonable provisions."
		(Emphasis added.)
		Supporting Evidence:
		• City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be
		submitted to the Electors of the City of San José, April 12, 1960, including "Argument
		in Favor of Proposition A").
5. As adopted by the voters	·	Undisputed;
San José City Charter states at Section 1500: Except as bereinafter otherwise provided, the Council shall provide, by	However, Title of Section 1500 reads: "Duty to Provide Retirement System."	
	Supporting Evidence:	
ordinance or ordinances	, for the creation,	• RJN, Exh. G (1965 Charter)
establishment and maint retirement plan or plans		
remement plan or plans	TOT ALL DIRECTS	

1 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3 4 5 6	and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any	
7	retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."	
9 10 11 12	Supporting Evidence: RJN, Exh. G (1965 Charter) (emphasis added).	
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	6. As adopted by the voters in 1965, the San José City Charter states at Section 1503: Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail aver the provisions of this	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems" (Emphasis added) * It reads, in its entirety: Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of any such retirement system ar systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right
28	Section."	to repeal or amend any such retirement system or

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence: RJN, Exh. G (1965 Charter) (cmphasis added).	systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.
	•	(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	RJN, Exh. A.	
8.	City Charter section 602 states: "The following acts of the Council shall be by	Undisputed (although this is not the entirety of section 602)
	ordinance: (a) Those acts required by	
	specific provision of this Charter or by ordinance."	
	0.	
	Supporting Evidence:	
	RJN, Exh. A	
9.	City Charter section 1500 states:	Objection: irrelevant; asked and answered
	"Except as hereinafter otherwise provided, the Council shall provide, by	(substance of Section 1500 addressed in previous paragraph)
	ordinance or ordinances, for the creation,	
	establishment and maintenance of a retirement plan or plans for all officers	
	and employees of the City."	
1	Supporting Evidence:	1

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
10.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, City Council only amended the Municipal C by way of ordinance to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	• Gurza Decl, Exhs. 54, 55	• Gurza Dcc., Exhs. 54
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
11.	In 2010, a Coalition of City unions	Objection: relevance and undue prejudice
	made a proposal to the City which stated:	Objections to Evidence 2-5
	5.1.2. Additional Retirement	Additional Supporting Evidence:
	Contribution.	• Allen Dec., ¶15
	Effective June 27, 2010 through	
	June 28, 2011, all employees will make additional retirement	·
	contributions in an amount	
	equivalent to 10% of total compensation effective June 27,	
	2010. The amounts so contributed will be applied to	
	subsidize and thus reduce the	
	prior service contributions that the City would otherwise be	
	required to make. The parties	
	specifically understand that this agreement neither alters nor	
	conflicts with the City Charter Section 1505(c) because under	
	this agreement, employees will	
	be subsidizing the City's Section 1505(c) required	
	contribution.	
•	Supporting Evidence:	
	• Gurza Dec.,¶¶ 16-19, Exh. 2.	
12.	Other union proposals, including	Objection: relevance and undue prejudice
	proposals by the SJPOA and 1AFF, also proposed that employees would pay	Objections to Evidence 2-5
	· ·	157 CASE NO. 1-12-CV-2

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
additional pension contributions to defray pension plan unfunded pension liabilities.	Additional Supporting Evidence: • Allen Dec., ¶15
Supporting Evidence: • Gurza Dec.,¶17, 18, Exhs. 3-6.	
 13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities (except the POA agreed only to a 5.25%. one time additional pension contribution): Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). Supporting Evidence: Gurza Dec., ¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29. 	Objection: relevance and undue prejudice Objections to Evidence 11, 12 Additional Supporting Evidence: Allen Dec., ¶15
14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:	Objection: relevance and undue prejudice Objections to Evidence 11, 13 Additional Supporting Evidence:
. 1:	58 CASE NO. 1-12-CV

2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	Association of Building, Mechanical and Electric Inspectors (ABMEI)	• Allen Dec., ¶15
4	Association of Legal Professionals (ALP).	
5	Executive Management and Professional Employees (Unit 99), and	
6	other unrepresented employees.	
7	Supporting Evidence:	
9	• Gurza Dec.,¶25, Exhs. 9, 13, 32, 33.	
10	15. The 2010-2011 Agreement MOA between the City and AEA, states at	Objection: relevance and undue prejudice
11	Section 10.1.1;	Objections to Evidence 11, 14
12	On-Going Additional Retirement	
13	Contributions. Effective June 27, 2010, all employees who are members of the	
14 15	Federated City Employees' Retirement System will make additional retirement	
16	contributions in the amount of 7.30% of pensionable compensation, and the	
17	amounts so contributed will be applied to reduce the contributions that the City	
18	would otherwise be required to make for the pension unfunded liability, which is	
19	defined as all costs in both the regular retirement fund and the cost-of-living	
20	fund, except current service normal costs in those funds. This additional	
21	employee retirement contribution would be in addition to the employee retirement	
22	contribution rates that have been	
23	approved by the Federated City Employees' Retirement System Board.	
24	The intent of this additional retirement contribution by employees is to reduce	
25	the City's required pension retirement contribution rate by a commensurate	
26	7.30% of pensionable compensation, as illustrated below	
27	musitated below	· · · · · · · · · · · · · · · · · · ·

28

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence: • Gurza Dec.,¶27, Exh, 11.	
16.	The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability" (Section 10.1.2)	Objection: relevance and undue prejudice Objections to Evidence 11, 15
	Supporting Evidence:	
	• Gurza Dec.,¶28, Exh, 11.	
12	TI- 2010 2011 MOAT - 1 - CV	
17.	The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this	Objection: relevance and undue prejudice Objections to Evidence 11, 14
	provision, an amendment must be made to the Federated City Employees'	
	Retirement System that requires an ordinance amending the San Jose	
	Municipal Code." (<i>Id.</i> at Section 10.1.4))	
	Supporting Evidence:	
	• Gurza Dec.,¶27, Exh, 11	
18.	The City's 2010-2011 agreements with the following unions stated in	Objection: relevance and undue prejudice
	connection with employees paying additional pension contributions "The	Objections to Evidence 11, 15
	parties understand that in order to implement this provision, an amendment	
	must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties	
		50 CASE NO. 1-12-CV-22

M	oving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."	
	Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case).	
Ş	• Gurza Dec.,¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.	
. v n	n 2011, the City reached agreements with the following unions for their nembers to accept an approximate 10% wage reduction for the period 2011-012: Association of Engineers and Architects (AEA) (plaintiff Mukhar is president), Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president) City Association of Management Personnel (CAMP) International Brotherhood of	Objection: relevance and undue prejudice Objections to Evidence 11, 16
		CASE NO. 1-12-CV-22: OF UNDISPUTED FACTS

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Electrical Workers, Local 332 (IBEW) International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case) San José Police Officers Association (plaintiff in the SJPOA case). International Association of Firefighters, Local 230;	
Supporting Evidence:	
• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.	Undisputed, but for clarification purposes: • Effective September 18, 2011, CEO member realized a 12.16% wage reduction
Supporting Evidence:	• Effective June 26, 2011, MEF members realized a 12.01% wage reduction
 Gurza Dec., ¶ 26, Exhs. 20, 28 	Supporting Evidence: Gurza Dec., Exhs. 20, 28
21. For Federated employees, the Municipal Code provides: "Notwithstanding any	Undisputed
other provisions of this Part 6 or of	Note: this section was added to the Municipal
Chapter 3.44, members of this system shall make such additional retirement	Code around June 2010 and became effective J 2010
contributions as may be required by resolution adopted by the city council or	Supporting Evidence:
by executed agreement with a recognized bargaining unit." (Municipal	• AFSCME RJN, Exh. F
Code 3.28.755)	
Supporting Evidence:	
RJN, Exh. C, (Municipal Code,	
Chapter 3.28).	
	62 CASE NO. 1-12-CV-2259

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	22. Under the Municipal Code for Police	Objection: relevance and undue prejudice
4	and Fire Plan employees.	Objections to Evidence 24
5	Police and Fire Plan employees not subject to interest arbitration, "shall	
6	make such additional retirement	
7	contributions as may be required by resolution adopted by the city council or	
8	by executed agreement with a recognized bargaining unit." (Municipal	
	Code 3.36.1525(A).)	
9 10	Police and Fire Plan employees subject to interest arbitration, "shall"	
11	make such additional retirement contributions for fiscal years 2010-2011	
12	as may be required by executed agreement with a recognized bargaining	
13	unit or binding order of arbitration."	
	(Municipal Code 3.36.1525(B).) Supporting Evidence:	
14	RJN, Exh. D, (Municipal Code,	
15	Chapter 3.36).	
16		
17		
18		
19		
20		
21		
22		
23		·
24		
25		
26		
27		
28	16	CASE NO. 1-12-CV-225926
		OF I NIDISPUTED EACTS

Issue 6B: San José Charter §1512-A (Employee Retiree Healthcare Contributions)

There are triable issues of material fact. Therefore, Defendants are not entitled to summary 3 adjudication as a matter of law.

2

ħ	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
23.	San José Charter Section 1512-A states:	Undisputed
	"Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities."	Note: this section was added by Measure B
	Supporting Evidence:	
	• RJN, Exh. B.	
24.	On or around April 12, 1960, the voters	Undisputed
	ratified Proposition A, which amended the San José Charter to include Section	
	78b.	
	Supporting Evidence:	
	RJN, Exh. E (California Aggreeably Consument)	
	Assembly Concurrent Resolution No. 17, adopted in	
	Assembly January 18, 1961, approving amendment of	
	Charter of San José to include Section 78b ("Discretionary	
	Powers of Council Respecting Retirement") of Article X).	
25.	Former San José Charter Section 78b	Disputed as incomplete (material terms missing
	stated:	
	"Anything in Section 78a of the Charter to the contrary notwithstanding, the	"Anything in Section 78a of the Charter the contrary notwithstanding, the Council
	Council in its discretion may at any time, or from time to time; by ordinance,	its discretion may at any time, or from tir to time, by ordinance, amend or otherwi
	amend or otherwise change the	change the retirement plan established
		64 CASE NO. 1-12-CV-22592 T OF UNDISPUTED FACTS

Moving Party's Undisputed Material Facts and Supporting Evidence

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

retirement plan established by said
Section 78a or any retirement plan or
plans established pursuant to said
Section 78a, or adopt or established a
new or different plan or plans for
eligible members of the police or fire
department of the City of San José "...
"all as the Council may deem proper and
subject to such conditions, restrictions,
limitations, terms and other provisions
as the Council may deem proper;..."

Supporting Evidence:

RJN, Exh. E (California
 Assembly Concurrent
 Resolution No. 17, adopted in
 Assembly January 18, 1961,
 approving amendment of
 Charter of San José to include
 Section 78b ("Discretionary
 Powers of Council Respecting
 Retirement") of Article X).

26. The ballot argument in favor of Proposition A stated:

"THIS AMENDMENT GIVES
DISCRETIONARY POWERS TO THE
CITY COUNCIL! It is good
government to allow the City Council to
be responsible for investigating
problems and deciding how to solve
them. [¶] THIS AMENDMENT IS
SIMPLE! Leave all the technical details

Opposing Party's Response and Supporting Evidence

said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:

(1) The Council shall not decrease any of said benefits below those which Section 78a makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a..."

(Emphasis added.)

Supporting Evidence:

• City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

Disputed as incomplete

The ballot argument in favor of Proposition A also says:

"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. The purpose of this amendment is to enable the City

165

CASE NO. 1-12-CV-225926

1	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	up to your City Council. They have a staff to assist them including a very capable City Attorney."	Council to take legal steps to provide survivor benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do no have Social Security or any other survivor benefits of any kind. Almost all other cities
	Supporting Evidence:	provide survivor benefits.
	 RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor 	SURVIVOR BENEFITS ARE PROHIBITED A PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matter
		just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable
		provisions." (Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to b submitted to the Electors of the City of Sa José, April 12, 1960, including "Argument in Favor of Proposition A").
27	As adopted by the voters in 1965 the	Undisputed
41.	27. As adopted by the voters in 1965, the San José City Charter states at Scetion 1500: Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all	However, Title of Section 1500 reads: "Duty to Provide Retirement System."
		Supporting Evidence:
		RJN, Exh. G (1965 Charter)
		,
	officers and employees. Subject to other	
	provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any	

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."	
	Supporting Evidence:	
	• RJN, Exh. G (1965 Charter) (emphasis added).	
28.	,	Disputed as incomplete
	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added)
	Charter, for the retirement of officers or employees of the City, adopted under	* It reads, in its entirety:
	any law or color of any law, including but not limited to those retirement	Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement
	systems established by Parts 1, 2 and 4	of officers or employees of the City, adopted under any law or color of any law, including but
	of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective	not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed,
	and shall continue until otherwise provided by ordinance However,	validated and declared legally effective and shall continue until otherwise provided by ordinance.
	subject to other provisions of this Article, the Council shall at all times	The foregoing provisions of this Section shall operate to supply such authorization as may be
	have the power and right to repeal or amend any such retirement system or	necessary to validate any such retirement system
	systems, and to adopt or establish a new or different plan or plans for all or any	or systems which could have been supplied in the Charter of the City of San Jose or by the people of
	officers or employees, it being the intent that the foregoing sections of this Article	the City at the time of adoption or amendment of any such retirement system or systems. However,
	shall prevail over the provisions of this	subject to other provisions of this Article, the Council shall at all times have the power and right
	Section."	to repeal or amend any such retirement system of systems, and to adopt or establish a new or
	Supporting Evidence:	different plan or plans for all or any officers or employees, it being the intent that the foregoing
	• RJN, Exh. G (1965 Charter).	sections of this Article shall prevail over the provisions of this Section.
		(Emphasis added)
		Supporting Evidence:

P	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	•	City's RJN, Exh. G (1965 Charter)
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence: • RJN, Exh. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety of Section 602)
	Supporting Evidence: • RJN, Exh. A	
31.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
	Supporting Evidence: • RJN, Exh. A	
32.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSCME's case, to City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:

1	Aoying Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	 Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances). 	• Gurza Dec., Exhs. 54 • Allen Dec., ¶21
33.	Municipal Code §3.28.385(C) provides: "Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one." Supporting Evidence: RJN, Exh. C.	Undisputed Note: this section was added to the Municipal Code around May 2011 Supporting Evidence: AFSCME RJN G
34.	Municipal Code §3.36.575(D) provides: "Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one." Supporting Evidence: RJN, Exh. D.	Objection: relevance and undue prejudice Objections to Evidence 24
35.	In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits. Supporting Evidence: Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	Undisputed
36.	Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs. Association of Building, Mechanical	Disputed When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC, they did so in part because of the followin attendant circumstances: a guaranteed sala increase for the remaining year of the contract, a healthy economy, and the healt 69 CASE NO. 1-12-CV-2259

1 Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 and Electrical Inspectors (ABMEI), financial situation of the City. At the time, 3 -- Association of Engineers and AFSCME was unaware of the Architects, IFPTE Local 21 (AEA Units approximately 20% reduction in staffing and 4 41/42 and 43), drastic reductions to compensation (reduced -- Association of Maintenance 5 pay, increased health benefit cost, etc.) that Supervisory Personnel (AMSP), the City would affect in the future. The -- City Association of Management 6 effect of these changes made a material Personnel (CAMP), --International Brotherhood of Electrical impact on the significance of the 2009 Workers, Local No. 332 (IBEW); agreement, and resulted in significantly -- Municipal Employees' Federation, greater costs by active employees under the 8 AFSCME Local 101 (MEF) 2009. At the time, AFSCME was unaware -- Confidential Employees Association. 9 of the City's future plans to design Measure AFSCME Local 101 (CEO); B and put it to the voters. As a result of --International Association of 10 Firefighters, Local 230; these intervening events, the 2009 -- San José Police Officers Association. agreement was never fully implemented by 11 the City and, indeed, key provisions have not been abandoned by the parties. It is 12 Supporting Evidence: AFSCME's position that the parties are no 13 longer operating under the agreement, if Gurza Dec. ¶39, Exhs. 21, 39, they ever were. 40, 41. 14 Supporting Evidence: 15 Allen Decl, ¶17; Doonan Decl. ¶78. The City's agreement with AEA stated: 16 Objection: relevance and undue prejudice The City and Employee Organization 17 Objections to Evidence 18 agree to transition from the current Disputed: City's cited sourced do not support its partial pre-funding of retiree medical 18 and dental healthcare benefits (referred statement to as the "policy method") to prefunding of the full Annual Required 19 Contribution (ARC) for the retiree 20 healthcare plan ("Plan"). The transition shall be accomplished by phasing into 21 fully funding the ARC over a period of five (5) years beginning June 28, 2009. 22 The Plan's initial unfunded retiree healthcare liability shall be fully 23 amortized over a thirty year period so that it shall be paid by June 30, 2039 24 (closed amortization).The City and Plan members (active employees) shall 25 contribute to funding the ARC in the ratio currently provided under Section 26 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, 27 contributions for retiree medical benefits shall be made by the City and members 28

1 2	(1) N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3 4 5 6		in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of cight-to-three The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.	
7		Supporting Evidence:	
8		 Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
9	38.	The AEA agreement further stated:	Objection: relevance and undue prejudice
10		The payments of the full ARC were to	Objections to Evidence 19
11		be phased in incrementally but: "[B]y the end of the five year phase-in, the	
12		City and plan members shall be contributing the full Annual Required Contribution in the ratio currently	
14		provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal	
15		Code."	
16		Supporting Evidence:	
17		• Gurza Decl., ¶ 41, Exh. 39,	
18		AEA, §12.3.	
19	39.	The provisions from the AEA agreement	Undisputed
20		on payments towards the full ARC is the same or substantially similar to the text	
21		in City agreements with the following unions:	
22		Association of Building, Mechanical	
23		and Electrical Inspectors (ABMEI), Association of Engineers and Architects,	
24		IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance	
25		Supervisory Personnel (AMSP), City Association of Management Personnel	
26		(CAMP), International Brotherhood of Electrical Workers, Local No. 332	
27		(IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF);	
28	<u> </u>	Confidential Employees Association.	7 CASE NO. 1-12-CV-225926

1	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
******	AFSCME Local 101 (CEO).	- R. C.
	Supporting Evidence:	
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
40.	The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.	Objection: relevance and undue prejudice Objections to Evidence 22, 23
	, -	
	• Gurza Dec., ¶ 44, Exhs.	
	21[Firefighters], Exh. 41[SJPOA].	
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.	Objection: relevance and unduc prejudice Objections to Evidence 20, 21
	Supporting Evidence:	
	• Gurza Dec., ¶43, Exh. 42, 43	
		·

Issue 6C: San José Charter §1511-A (Supplemental Retiree Benefit Reserve) Causes

of Action

There are triable issues of material fact. Therefore, Defendants are not entitled to summary 4 adjudication as a matter of law.

N	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
42.	Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:	Undisputed
	The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.	
	Supporting Evidence:	
	• RJN, Exh. B.	
43.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.	Undisputed
	Supporting Evidence:	
	 RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X). 	
44.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing

CASE NO. 1-12-CV-225926

Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 "Anything in Section 78a of the Charter "Anything in Section 78a of the Charter to 3 to the contrary notwithstanding, the the contrary notwithstanding, the Council in 4 Council in its discretion may at any its discretion may at any time, or from time time, or from time to time, hy ordinance, to time, by ordinance, amend or otherwise 5 amend or otherwise change the change the retirement plan established by retirement plan established by said said Section 78a or any retirement plan or G Section 78a or any retirement plan or plans established pursuant to said Section plans established pursuant to said 78a, or adopt or establish a new or different Section 78a, or adopt or established a plan or plans for eligible members of the 8 new or different plan or plans for police or fire department of the City of San eligible members of the police or fire José, for the purpose of providing benefits 9 department of the City of San José" ... for members of any such plan or plans in "all as the Council may deem proper and excess of those benefits authorized or 10 subject to such conditions, restrictions, required by the provisions of said Section 89a" ... "all as the Council may deem 11 limitations, terms and other provisions as the Council may deem proper;..." proper and subject to such conditions, 12 restrictions, limitations, terms and other provisions as the Council may deem proper; 13 Supporting Evidence: provided, however, that: 14 RJN, Exh. E (California (1) The Council shall not decrease any of said Assembly Concurrent benefits below those which Section 78a 15 Resolution No. 17, adopted in makes mandatory, nor otherwise deprive Assembly January 18, 1961, any member of any such plan of any rights 16 approving amendment of to which he would be entitled under Section Charter of San José to include 17 78a...." Section 78b ("Discretionary (Emphasis added.) 18 Powers of Council Respecting Retirement") of Article X). 19 **Supporting Evidence:** 20 • City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in 21 Assembly January 18, 1961, approving 22 amendment of Charter of San José to include Section 78b ("Discretionary Powers 23 of Council Respecting Retirement") of Article X). 24 45. The ballot argument in favor of Disputed as incomplete 25 Proposition A stated: 26 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A DISCRETIONARY POWERS TO THE also says: 27 CITY COUNCIL! It is good YOUR POLICE AN FIREMEN NEED government to allow the City Council to 28

2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	be responsible for investigating	PROPOSITION A! Proposition A was placed on
	problems and deciding how to solve them. [¶] THIS AMENDMENT IS	the ballot by the City Council at the request of the members of your police and fire departments. <i>The</i>
4	SIMPLE! Leave all the technical details	purpose of this amendment is to enable the City
5	up to your City Council. They have a	Council to take legal steps to provide survivor
6	staff to assist them including a very capable City Attorney."	benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not
7	Commonting Paid on a co	have Social Security or any other survivor benefits of any kind. Almost all other cities
8	Supporting Evidence:	provide survivor benefits.
9	RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order
10	to the Electors of the City of San José , April 12, 1960,	to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment
12	including "Argument in Favor	mercly unties the hands of your City Council.
13	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
14	·	One reason is that the City Council should have
15		broad powers to investigate and decide on matters just like this. A second reason is that the
16		policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."
17		(Emphasis added.)
18		Supporting Evidence:
19		• City's RJN, Exh. F (Ballot Pamphlet for
20		Charter Amendment – Proposition A, to be submitted to the Electors of the City of San
21		José, April 12, 1960, including "Argument in Favor of Proposition A").
22 23	46. As adopted by the voters in 1965, the San José City Charter states at Section	Undisputed
24	1500:	
ii	Except as hereinafter otherwise provided, the Council shall provide, by	
25	ordinance or ordinances, for the creation,	
26	establishment and maintenance of a retirement plan or plans for all officers	
27	and employees of the City. Such plan or	·
28	plans need not be the same for all	<u> </u>
		75 CASE NO. 1-12-CV-225926 COF UNDISPUTED FACTS
		TION FOR SUMMARY ADJUDICATION

176 CASE NO.

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

CASE NO. 1-12-CV-225926

N	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		provisions of this Section.
		(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The	Undisputed (although this is not the entirety
	following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by	Section 602)
	ordinance."	
	Supporting Evidence:	
	• RJN, Exh. A	
50.		Objection: irrelevant; asked and answered
	"Except as hereinafter otherwise	(substance of Section 1500 addressed in
	provided, the Council shall provide, by ordinance or ordinances, for the creation,	previous paragraph)
	establishment and maintenance of a	
retirement plan or plans for all officers and employees of the City."		
	Supporting Evidence:	
	• RJN, Exh. A	
51.	•	Disputed: as is relevant to AFSMCE's case,
	ordinances implementing Measure B.	City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	Gurza Decl, Exhs. 54, 55	• Gurza Dec., Exhs. 54

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Supporting Evidence:	
	• RJN., Exh. D.	
55.	In 2002, the City Council adopted	Objection: irrelevant and unduly prejudicial
	Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree	Objections to evidence 25
	Benefit Reserve Of The Police and Fire Department Retirement Fund."	
	Supporting Evidence:	
	• RJN., Exh. N.	
56.	Beginning in 2010, the City Council	N. Ohio etia un implantant and undulu prajudicial
	amended the Municipal Code for the Police and Fire retirement plan to provide	N Objection: irrelevant and unduly prejudicial Objections to evidence 24
	that "there shall be no distribution during calendar years 2010, 2011, 2012 or	
	during calendar year 2013" (Municipal Code section 3.36.580(D)(2)	
	Supporting Evidence:	
	• RJN., Exh. D.	
57.	•	Undisputed as to Federated City Employees' Retirement System
	authorized the Federated SRBR, and in 2001, when the City Council authorized	Remement System
	the Police and Fire SRBR, the actuaries reported that the City's two pension	
	retirement funds were fully funded.	
	Supporting Evidence:	
	• RJN, Exh. O [November 22,	
	1985 Letter from Coates, Herfurth & England, to Edward	
	F. Overton, Retirement and	
	Benefits Administrator, re: SB650 Study]; Gurza Dec.,	
	Exh 59 [Actuarial Valuation Report, City of San José Police	
 	and Fire Department Retirement	179 CASE NO. 1-12-CV-2259

1	e waa Dagged	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
2	(Plan, as of June 30, 2012, at p.	Supporting Evidence
3		5 (showing plan overfunded at	
4		114.8% as of June 30, 2001]	
5	58.	In 2010, 2011, and 2012, the actuaries	Undisputed as to Federated City Employees'
6		reported that the City's two pension	Retirement System
7		funds had unfunded pension liabilities.	
8		Supporting Evidence:	
9			
10		• Gurza Dec., ¶ 49, Exhs. 58, 59	
11		[2012 Cheiron reports, Federated Employees Retirement System at	
12		p. 6, Police and Fire Department Retirement Plan at p. 5, tables	
13		showing unfunded pension	
14		liabilities]	
15	59	In 2011, and 2012, the actuaries reported	Undisputed as to Federated City Employees'
		that the City's two pension funds had	Retirement System
16		"excess earnings" for the year – as defined in the Municipal Code – to fund	
17		the SRBR.	
18		Supporting Evidence:	
19		• Gurza Dec., Exhs. 44, 45, 46, 47,	·
20		48.	
21			
22			
23			
24			
25			
26			
27			
28			
		18 SEPARATE STATEMENT	

City third cause of action

2

3

4

5

Issue 7A: San José Charter §1506-A (Employee Additional Pension Contributions)

There are triable issues of material facts. Therefore, Defendants are not entitled to summary adjudication as a matter of law.

7	(0),513,000 (0),513,000 (0),513,000		
8	1	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
9	1.	Section 1506-A ("Current Employees") of Measure B states:	Undisputed
10 11	(a)	"Current Employees" means employees of the City of San José as of the	
12		effective date of this Act and who are not covered under the Tier 2 Plan	
13	(b)	(Section 8). Unless they voluntarily opt in to the	
14		Voluntary Election Program ("VEP;" described herein), Current Employees	
15 16		shall have their compensation adjusted through additional retirement contributions in increments of 4% of	
17		pensionable pay per year, up to a maximum of 16%, but not more than	
18		50% of the costs to amortize any pension unfunded liabilities, except for any	
19 20		pension unfunded liabilities that may exist due to Tier 2 benefits in the future.	
21		These contributions shall be in addition to employees' normal pension	
22		contributions and contributions towards retiree healthcare benefits.	
23	(c)	The starting date for an employee's compensation adjustment under this	·
24		Section shall be June 23, 2013, regardless of whether the VEP has been	
25 26		implemented. If the VEP has not been implemented or any reason, the	
27		compensation adjustments shall apply to all Current Employees.	
28	(d)	The compensation adjustment through	

7 7 7	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	additional employee contributions for Current Employees shall be calculated	
	separately for employees in the Police	
	and Fire Department Retirement Plan	·
	and employees in the Federated City Employees' Retirement System.	
(e)	The compensation adjustment shall be	
	treated in the same manner as any other	
	employee contributions. Accordingly, the voters intend these additional	
	payments to be made on a pre-tax basis	
	through payroll deductions pursuant to applicable Internal Revenue Code	
	Sections. The additional contributions	
	shall be subject to withdrawal, return	
	and redeposit in the same manner as any other employee contributions.	:
	•	
	Supporting Evidence:	
	Defendant's Request for	
	Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").	
	B, pp. 4-3 (Measure B).	
2.	On or around April 12, 1960, the voters	Undisputed
	ratified Proposition A, which amended the San José Charter to include Section	
	78b.	
	Supporting Evidence:	
	 RJN, Exh. E (California 	
	Assembly Concurrent Resolution No. 17, adopted in	Ì
	Assembly January 18, 1961,	·
	approving amendment of	
	Charter of San José to include Section 78b ("Discretionary	
	Powers of Council Respecting	
	Retirement") of Article X).	
-	11	CASE NO. 1.12 CV 005000
	SEPARATE STATEMENT	32 CASE NO. 1-12-CV-22592

1 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
3	3. Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing). In relevant part, the section read:
5	"Anything in Section 78a of the Charter to the contrary notwithstanding, the	"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time
6	Council in its discretion may at any time, or from time to time, by ordinance,	to time, by ordinance, amend or otherwise
7	amend or otherwise change the retirement plan established by said	change the retirement plan established by said Section 78a or any retirement plan or
8	Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a	plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the
10	new or different plan or plans for eligible members of the police or fire	police or fire department of the City of San José, for the purpose of providing benefits
11	department of the City of San José " "all as the Council may deem proper and	for members of any such plan or plans in excess of those benefits authorized or
12	subject to such conditions, restrictions, limitations, terms and other provisions	required by the provisions of said Section 89a" "all as the Council may deem
13 14	as the Council may deem proper;"	proper and subject to such conditions, restrictions, limitations, terms and other
15	Supporting Evidence:	provisions as the Council may deem proper; provided, however, that:
16	 RJN, Exh. E (California Assembly Concurrent 	(1) The Council shall not decrease any of said benefits below those which Section 78a
17 18	Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of	makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section
19	Charter of San José to include Section 78b ("Discretionary	78a" (Emphasis added.)
20	Powers of Council Respecting Retirement") of Article X).	Supporting Evidence:
21		City's RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in
22 23		Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers
24		of Council Respecting Retirement") of Article X).
25	4. The ballot argument in favor of	Disputed as incomplete (material terms missing). The ballot argument in favor of Proposition
26	Proposition A stated: "THIS AMENDMENT GIVES	A also says:
27	DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good	"YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on
∠ð		33 CASE NO. 1-12-CV-225926
	SEPARATE STATEMENT IN SUPPORT OF DEFENDANTS' MOT	OF UNDISPUTED FACTS ION FOR SUMMARY ADJUDICATION

1 Opposing Party's Response and Moving Party's Undisputed Material Facts and Supporting Evidence Supporting Evidence 2 government to allow the City Council to the ballot by the City Council at the request of the 3 members of your police and fire departments. The be responsible for investigating purpose of this amendment is to enable the City problems and deciding how to solve them. [¶] THIS AMENDMENT IS Council to take legal steps to provide survivor SIMPLE! Leave all the technical details benefits for your policemen's and firemen's 5 families. San Jose Policemen and Firemen do not up to your City Council. They have a 6 staff to assist them including a very have Social Security or any other survivor benefits of any kind. Almost all other cities capable City Attorney." 7 provide survivor benefits. 8 SURVIVOR BENEFITS ARE PROHIBITED AT Supporting Evidence: PRESENT IN THE CITY CHARTER! In order 9 RJN, Exh. F (Ballot Pamphlet to allow the City Council to adopt reasonable for Charter Amendment survivor benefits, it is necessary to amend the 10 Proposition A, to be submitted City Charter. In other words, this amendment to the Electors of the City of merely unties the hands of your City Council. 11 San José, April 12, 1960, NO SPECIFIC PLAN IS PROPOSED IN THIS including "Argument in Favor 12 AMENDMENT! of Proposition A"). 13 One reason is that the City Council should have broad powers to investigate and decide on matters 14 just like this. A second reason is that the policemen and firemen have confidence that the 15 City Council will enact fair and reasonable provisions." 16 (Emphasis added.) 17 Supporting Evidence: 18 City's RJN, Exh. F (Ballot Pamphlet for 19 Charter Amendment - Proposition A, to be submitted to the Electors of the City of San 20 José, April 12, 1960, including "Argument in Favor of Proposition A"). 21 As adopted by the voters in 1965, the Undisputed; 22 San José City Charter states at Section However, Title of Section 1500 reads: "Duty to 1500: 23 Provide Retirement System." Except as hereinafter otherwise Supporting Evidence: 24 provided, the Council shall provide, by RJN, Exh. G (1965 Charter) ordinance or ordinances, for the creation, 25 establishment and maintenance of a retirement plan or plans for all officers 26 and employees of the City. Such plan or 27 plans need not be the same for all officers and employees. Subject to other 28 CASE NO. 1-12-CV-225926

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."	
İ	Supporting Evidence:	
	 RJN, Exh. G (1965 Charter) (emphasis added). 	
6.	As adopted by the voters in 1965, the San José City Charter states at Section 1503:	Disputed as incomplete * The Title of Section 1503 is: "Continuance of Existing Retirement Systems"
	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added)
	Charter, for the retirement of officers or	* It reads, in its entirety:
	employees of the City, adopted under any law or color of any law, including but not limited to those retirement	Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	under any law or color of any law, including but
	Municipal Code, are hereby confirmed,	not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the
	validated and declared legally effective and shall continue until otherwise	San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall
	provided by ordinance However, subject to other provisions of this Article, the Council shall at all times	continue until otherwise provided by ordinance. The foregoing provisions of this Section shall
	have the power and right to repeal or	operate to supply such authorization as may be necessary to validate any such retirement system
	amend any such retirement system or systems, and to adopt or establish a new	or systems which could have been supplied in the Charter of the City of San Jose or by the people of
	or different plan or plans for all or any officers or employees, it being the intent	the City at the time of adoption or amendment of
	that the foregoing sections of this Article	any such retirement system or systems. However, subject to other provisions of this Article, the
	shall prevail over the provisions of this Section."	Council shall at all times have the power and right to repeal or amend any such retirement system or
		systems, and to adopt or establish a new or
	Supporting Evidence:	different plan or plans for all or any officers or employees, it being the intent that the foregoing
	 RJN, Exh. G (1965 Charter) (emphasis added). 	sections of this Article shall prevail over the provisions of this Section.

N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
7.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
8.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by	Undisputed (although this is not the entirety section 602)
	specific provision of this Charter or by ordinance."	
	Supporting Evidence:	
	• RJN, Exh. A	
9.	City Charter section 1500 states: "Except as hercinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in preparagraph)
	Supporting Evidence:	
	• RJN, Exh. A	
10.	•	Disputed: as is relevant to AFSCME's case
	ordinances implementing Measure B.	City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	Gurza Decl, Exhs. 54, 55	• Gurza Dec., Exhs. 54

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
11. In 2010, a Coalition of City unions made a proposal to the City which stated:	Objection: relevance and undue prejudice Objections to Evidence 2-5
5.1.2. Additional Retirement Contribution.	Additional Supporting Evidence: • Allen Dec., ¶15
Effective June 27, 2010 through	
June 28, 2011, all employees will make additional retirement	
contributions in an amount equivalent to 10% of total	
compensation effective June 27, 2010. The amounts so	
contributed will be applied to subsidize and thus reduce the	
prior service contributions that the City would otherwise be	
required to make. The parties	
specifically understand that this agreement neither alters nor	
conflicts with the City Charter Section 1505(c) because under	
this agreement, employees will be subsidizing the City's	
Section 1505(c) required contribution.	
Contribution.	
Supporting Evidence:	
• Gurza Dec., ¶ 16-19, Exh. 2.	
,	
12. Other union proposals, including	Objection: relevance and undue prejudice
proposals by the SJPOA and IAFF, also proposed that employees would pay	Objections to Evidence 2-5
additional pension contributions to	Additional Supporting Evidence:
defray pension plan unfunded pension liabilities.	• Allen Dec., ¶15
Supporting Evidence:	
• Gurza Dec.,¶17, 18, Exhs. 3-6.	·
13. For the period 2010-2011, the following	Objection: relevance and undue prejudice
SEPARATE STATEMEN	87 CASE NO. 1-12-CV-2259

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
six unions agreed that their members would pay additional ongoing and one	Objections to Evidence 11, 12
time employee pension contributions, and accept wage reductions, totaling	Additional Supporting Evidence:
approximately 10% during fiscal year 2010-2011 to be used to defray pension	• Allen Dec., ¶15
plan unfunded liabilities (except the POA agreed only to a 5.25%, one time	
additional pension contribution):	
Association of Engineers and Architects (AEA) (plaintiff Mukhar i.)	s
president), • Association of Maintenance	
Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
City Association of Management Personnel (CAMP)	
International Brotherhood of	
Electrical Workers, Local 332 (IBEW)	
 International Union of Operating Engineers, Local No. 3 (representing 	
plaintiffs in the Harris case) San José Police Officers Association	
(plaintiff in the SJPOA case).	
Supporting Evidence:	
• Gurza Dec.,¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.	
14. For the period 2010-2011, the following	TO BE THE CONTROL OF
unions either agreed to a wage reduction or the City imposed a wage reduction:	Objections to Evidence 11, 13
Association of Building, Mechanical	Additional Supporting Evidence:
and Electric Inspectors (ABMEI)Association of Legal Professionals	• Allen Dec., ¶15
(ALP)Executive Management and	
Professional Employees (Unit 99), and other unrepresented employees.	

CASE NO. 1-12-CV-225926

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Supporting Evidence:	
• Gurza Dec.,¶25, Exhs. 9, 13, 32, 33.	
15. The 2010-2011 Agreement MOA	Objection: relevance and undue prejudice
between the City and AEA, states at Section 10.1.1:	
becton 10.1.1.	Objections to Evidence 11, 14
On-Going Additional Retirement	
Contributions. Effective June 27, 2010,	
all employees who are members of the	
Federated City Employees' Retirement	
System will make additional retirement	
contributions in the amount of 7.30% of	
pensionable compensation, and the	
amounts so contributed will be applied	
to reduce the contributions that the City	
would otherwise be required to make for	·
the pension unfunded liability, which is defined as all costs in both the regular	
retirement fund and the cost-of-living	
fund, except current service normal costs	
in those funds. This additional	·
employee retirement contribution would	
be in addition to the employee retirement	
contribution rates that have been	
approved by the Federated City	
Employees' Retirement System Board.	
The intent of this additional retirement	
contribution by employees is to reduce	
the City's required pension retirement contribution rate by a commensurate	
7.30% of pensionable compensation, as	
illustrated below	
Supporting Evidence:	
 Gurza Dec.,¶27, Exh, 11. 	
×11 /	
16. The 2010-2011 MOA between the City	Objection: relevance and undue prejudice
and AEA, also agreed to employees making an additional one time pension	Objections to Evidence 11, 15
contribution "in the amount of 3.53% of	- Ojediona w Lyidonoc 11, 15

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

1	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability" (Section 10.1.2)	
:	Supporting Evidence:	
	• Gurza Dec.,¶28, Exh, 11.	
17.	The 2010-2011 MOA between the City	Ohjection: relevance and undue prejudice
	employees paying additional pension	Objections to Evidence 11, 14
	contributions: "The parties understand that in order to implement this	
	provision, an amendment must be made to the Federated City Employees'	
	Retirement System that requires an ordinance amending the San Jose	
	Municipal Code." (Id. at Section 10.1.4))	
	Supporting Evidence:	•
	• Gurza Dec.,¶27, Exh, 11	
18.	The City's 2010-2011 agreements with the following unions stated in	Objection: relevance and undue prejudice
	connection with employees paying additional pension contributions "The	Objections to Evidence 11, 15
	parties understand that in order to	
	implement this provision, an amendment must be made to the Federated	
	Employees' Retirement System that requires an ordinance amending the San	
	Jose Municipal Code" or "The parties understand that in order to implement	
	this provision, an amendment must be made to the Police and Fire Department	
	Retirement Plan that requires an ordinance amending the san Jose	
	Municipal Code."	
	 Association of Engineers and Architects (AEA) (plaintiff Mukhar is 	
	president),	

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Association of Maintenance Association of Maintenance	# 100 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m 1
Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
 City Association of Management 	
Personnel (CAMP) • International Brotherhood of	
Electrical Workers, Local 332	
(IBEW)	
 International Union of Operating Engineers, Local No. 3 (representing 	·
plaintiffs in the Harris case)	
 San José Police Officers Association (plaintiff in the SJPOA case). 	
(Mariani in the 551 O.1 6450).	
Supporting Evidence:	
• Gurza Dec.,¶¶ 6, 28, Exhs. 11,	
15, 17, 23, 25, 29.	
19. In 2011, the City reached agreements	Objection: relevance and undue prejudice
with the following unions for their	Objections to Evidence 11, 16
members to accept an approximate 10% wage reduction for the period 2011-	
2012:	
 Association of Engineers and Architects (AEA) (plaintiff Mukhar is 	
president),	
Association of Maintenance Symposium Paragraph (AMSP)	
Supervisory Personnel (AMSP) (plaintiff Dapp is president)	
City Association of Management	
Personnel (CAMP) • International Brotherhood of	
Electrical Workers, Local 332	
(IBEW)International Union of Operating	
Engineers, Local No. 3 (representing	
plaintiffs in the Harris case)	
 San José Police Officers Association (plaintiff in the SJPOA case). 	
 International Association of 	
Firefighters, Local 230;	

28

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Supporting Evidence: • Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.	
20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012. Supporting Evidence:	 Undisputed, but for clarification purposes: Effective September 18, 2011, CEO member realized a 12.16% wage reduction Effective June 26, 2011, MEF members realized a 12.01% wage reduction
• Gurza Dec., ¶ 26, Exhs. 20, 28	Supporting Evidence: Gurza Dec., Exhs. 20, 28
21. For Federated employees, the Municipal Code provides: "Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit." (Municipal Code 3.28.755)	Undisputed Note: this section was added to the Municipal Code around June 2010 and became effective. 2010 Supporting Evidence: • AFSCME RJN, Exh. F
Supporting Evidence: • RJN, Exh. C, (Municipal Code, Chapter 3.28).	
22. Under the Municipal Code for Police and Fire Plan employees.	Objection: relevance and undue prejudice Objections to Evidence 24
 Police and Fire Plan employees not subject to interest arbitration, "shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a 	

16. 44.5	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party' Supporting	
	recognized bargaining unit." (Municipal Code 3.36.1525(A).)		
	 Police and Fire Plan employees subject to interest arbitration, "shall make such additional retirement 		
	contributions for fiscal years 2010-2011 as may be required by executed		
	agreement with a recognized bargaining unit or binding order of arbitration." (Municipal Code 3.36.1525(B).)	1 0000	
	Supporting Evidence:		
	 RJN, Exh. D, (Municipal Code, Chapter 3.36). 		
			•
	1		
	•		
	1	93	CASE NO. 1-12-CV-225

There are triable issues of material fact. Therefore, Defendants are not entitled to summary 3 adjudication as a matter of law.

2

4	<u> </u>		
5	Ŋ	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
6	23.	San José Charter Section 1512-A states:	Undisputed
7		"Existing and new employees must contribute a minimum of 50% of the cost	Note: this section was added by Measure B
8 9		of retiree healthcare, including both normal cost and unfunded liabilities."	
10		Supporting Evidence:	
11		• RJN, Exh. B.	
12 -		0 14 112 1000 41	TI dida
13	24.	On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section	Undisputed
14		78b.	
15 16		Supporting Evidence:	•
17		RJN, Exh. E (California	
18		Assembly Concurrent Resolution No. 17, adopted in	
9		Assembly January 18, 1961, approving amendment of	
o		Charter of San José to include Section 78b ("Discretionary	·
1		Powers of Council Respecting Retirement") of Article X).	
2		Kethement) of Article A).	
3			
4	25.	Former San José Charter Section 78b stated:	Disputed as incomplete (material terms missing);
5		"Anything in Section 78a of the Charter	"Anything in Section 78a of the Charter to
26		to the contrary notwithstanding, the Council in its discretion may at any	the contrary notwithstanding, the Council is
27		time, or from time to time, by ordinance, amend or otherwise change the	its discretion may at any time, or from time to time, by ordinance, amend or otherwise
28 L			change the retirement plan established by CASE NO. 1-12-CV-225926
-		SEPARATE STATEMENT	OF UNDISPUTED FACTS

IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

Ì 2 3 4 5 6 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

27

28

Moving Party's Undisputed Material Facts and Supporting Evidence

retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper..."

Supporting Evidence:

RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

26. The ballot argument in favor of Proposition A stated:

"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very

Opposing Party's Response and Supporting Evidence

said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire department of the City of San José, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or required by the provisions of said Section 89a" ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:

(1) The Council shall not decrease any of said benefits below those which Section 78al makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a...."

(Emphasis added.)

Supporting Evidence:

 City's RJN, Exh. E (California Assembly) Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

Disputed as incomplete

The ballot argument in favor of Proposition A also says:

YOUR POLICE AN FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. The parpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's

CASE NO. 1-12-CV-225926

N	Aoving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	capable City Attorney." Supporting Evidence:	fumilies. San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.
	 RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor 	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matters just like this. A second reason is that the
	policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."	
		(Emphasis added.)
		Supporting Evidence:
		 City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").
27.	As adopted by the voters in 1965, the	Undisputed
	San José City Charter states at Section 1500:	However, Title of Section 1500 reads: "Duty to Provide Retirement System."
	Except as hereinafter otherwise provided, the Council shall provide, by	Supporting Evidence:
	ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time,	• RJN, Exh. G (1965 Charter)
	amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or	

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	plans for all or any officers or employees."	
	 Supporting Evidence: RJN, Exh. G (1965 Charter) (emphasis added). 	
28.	As adopted by the voters in 1965, the San José City Charter states at Section 1503:	Disputed as incomplete * The Title of Section 1503 is: "Continuance of
	Any and all retirement system or	Existing Retirement Systems" (Emphasis added)
:	systems, existing upon adoption of this Charter, for the retirement of officers or	* It reads, in its entirety:
	employees of the City, adopted under	Any and all retirement system or systems, existing
	any law or color of any law, including but not limited to those retirement	upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established
	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	
	Municipal Code, are hereby confirmed, validated and declared legally effective	by Parts 1, 2 and 4 of Chapter 9 of Article II of the
	and shall continue until otherwise provided by ordinance However,	San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall
	subject to other provisions of this Article, the Council shall at all times	continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be
	have the power and right to repeal or amend any such retirement system or	necessary to validate any such retirement system
	systems, and to adopt or establish a new	or systems which could have been supplied in the Charter of the City of San Jose or by the people of
	or different plan or plans for all or any officers or employees, it being the intent	the City at the time of adoption or amendment of any such retirement system or systems. However,
	that the foregoing sections of this Article shall prevail over the provisions of this	subject to other provisions of this Article, the Council shall at all times have the power and right
	Section."	to repeal or amend any such retirement system or
Supporting Evidence: RJN, Exh. G (1965 Charter).	Sunnarting Evidence	systems, and to adopt or establish a new or different plan or plans for all or any officers or
	employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.	
		(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)

N	Ioving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
29.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence: ■ RJN, Exh. A.	
30.	City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Undisputed (although this is not the entirety of Section 602)
	Supporting Evidence:	
	• RJN, Exh. A	
31.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previparagraph)
	Supporting Evidence: • RJN, Exh. A	
32.	The City Council has enacted some ordinances implementing Measure B.	Disputed: as is relevant to AFSMCE's case, City Council has only implement the elimination of the SRBR.
	Supporting Evidence: • Gurza Decl, Exhs. 54, 55	Supporting Evidence: • Gurza Dec., Exhs. 54
	(Federated, Police and Fire	• Allen Dec., ¶21 OR CASE NO. 1-12-CV-22

N	Inving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Ordinances).	
33.	Municipal Code §3.28.385(C) provides:	Undisputed
-	"Contributions for other medical benefits shall be made by the City and the	Note: this section was added to the Municipal Code around May 2011
	members in the ratio of one-to-onc."	Supporting Evidence: • AFSCME RJN G
	Supporting Evidence:	• AFSCME RING
	• RJN, Exh. C.	
34.	Municipal Code §3.36.575(D) provides:	Objection: relevance and undue prejudice
	"Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one."	Objections to Evidence 24
	Supporting Evidence:	
	• RJN, Exh. D.	
35.	In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.	Undisputed
	Supporting Evidence:	
	• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.	
36.	Beginning in 2009, the City reached agreement with the following City	Disputed
	unions for employees to make annual contributions, increasing incrementally	When MEF and CEO reached an agreement in 2009 with respect to funding of the ARC,
	each year, to fund up to 50% of the unfunded liabilities of retiree healthcare costs.	they did so in part because of the following attendant circumstances: a guaranteed sala
	Association of Building, Mechanical and Electrical Inspectors (ABMEI),	increase for the remaining year of the contract, a healthy economy, and the healt financial situation of the City. At the time

IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

1 Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 Architects, IFPTE Local 21 (AEA Units approximately 20% reduction in staffing and 3 41/42 and 43), drastic reductions to compensation (reduced -- Association of Maintenance pay, increased health benefit cost, etc.) that 4 Supervisory Personnel (AMSP), the City would affect in the future. The -- City Association of Management 5 effect of these changes made a material Personnel (CAMP), impact on the significance of the 2009 -- International Brotherhood of Electrical 6 Workers, Local No. 332 (IBEW); agreement, and resulted in significantly -- Municipal Employees' Federation, greater costs by active employees under the 7 AFSCMË Local 101 (MEF) 2009. At the time, AFSCME was unaware -- Confidential Employees Association, of the City's future plans to design Measure 8 AFSCME Local 101 (CEO); B and put it to the voters. As a result of --International Association of 9 these intervening events, the 2009 Firefighters, Local 230: agreement was never fully implemented by -- San José Police Officers Association. 10 the City and, indeed, key provisions have not been abandoned by the parties. It is 11 AFSCME's position that the parties are no Supporting Evidence: longer operating under the agreement, if 12 Gurza Dec. ¶¶39, Exhs. 21, 39, they ever were. 40, 41. 13 Supporting Evidence: 14 Allen Decl, ¶17; Doonan Decl. ¶ 78. The City's agreement with AFA stated: 15 Objection: relevance and undue prejudice The City and Employee Organization Objections to Evidence 18 16 agree to transition from the current Disputed: City's cited sourced do not support its partial pre-funding of retiree medical 17 and dental healthcare benefits (referred statement to as the "policy method") to prefunding 18 of the full Annual Required Contribution (ARC) for the retiree 19 healthcare plan ("Plan"). The transition shall be accomplished by phasing into 20 fully funding the ARC over a period of five (5) years beginning June 28, 2009. 21 The Plan's initial unfunded retiree healthcare liability shall be fully 22 amortized over a thirty year period so that it shall be paid by June 30, 2039 23 (closed amortization). ... The City and Plan members (active employees) shall 24 contribute to funding the ARC in the ratio currently provided under Section 25 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, 26 contributions for retiree medical benefits shall be made by the City and members 27 in the ratio of one-to-one. Contributions for retiree dental benefits shall be made 28 by the City and members in the ratio of CASE NO. 1-12-CV-225926

200 CASE NO.

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	eight-to-three The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.	
	Supporting Evidence:	
	 Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1. 	
38.	The AEA agreement further stated:	Objection: relevance and undue prejudice
	The payments of the full ARC were to be phased in incrementally but: "[B]y	Objections to Evidence 19
	the end of the five year phase-in, the	•
	City and plan members shall be contributing the full Annual Required	
	Contribution in the ratio currently provided under Section 3.28.380 (C) (1)	
	and (3) of the San José Municipal Code."	
	Supporting Evidence:	
	 Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3. 	
39.	The provisions from the AEA agreement	Undisputed
	on payments towards the full ARC is the	
	same or substantially similar to the text in City agreements with the following	
	unions:	
	Association of Building, Mechanical and Electrical Inspectors (ABMEI),	•
	Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and	
	43), Association of Maintenance Supervisory Personnel (AMSP), City	
	Association of Management Personnel (CAMP), International Brotherhood of	
	Electrical Workers, Local No. 332 (IBEW); Municipal Employees'	
	Federation, AFSCME Local 101 (MEF); Confidential Employees Association,	
	AFSCME Local 101 (CEO).	

SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

	Noving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	• Gurza Dec., ¶ 43, Exhs. 39, 40, 41.	
40.	The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage. Supporting Evidence: Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].	Objection: relevance and undue prejudice Objections to Evidence 22, 23
41.	In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC. Supporting Evidence:	Objection: relevance and undue prejudice Objections to Evidence 20, 21
	• Gurza Dec., ¶43, Exh. 42, 43	
	20	2 CASE NO. 1-12-CV-22

3

adjudication as a matter of law.

4 5

6

7 8

9

10

11

12

13

14 15

16

17

18

19 20

21

22

23

24

25

26

27 28 Moving Party's Undisputed Material Facts and Supporting Evidence

42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:

> The Supplemental Retirce Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Supporting Evidence:

- RJN, Exh. B.
- 43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.

Supporting Evidence:

RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).

44. Former San José Charter Section 78b stated:

> "Anything in Section 78a of the Charter to the contrary notwithstanding, the

Opposing Party's Response and Supporting Evidence

Undisputed

Undisputed

Disputed as incomplete (material terms missing):

"Anything in Section 78a of the Charter to

203

CASE NO. 1-12-CV-225926

] Moving Party's Undisputed Material Opposing Party's Response and Facts and Supporting Evidence Supporting Evidence 2 Council in its discretion may at any the contrary notwithstanding, the Council in 3 time, or from time to time, by ordinance, its discretion may at any time, or from time amend or otherwise change the to time, by ordinance, amend or otherwise 4 retirement plan established by said change the retirement plan established by 5 Section 78a or any retirement plan or said Section 78a or any retirement plan or plans established pursuant to said plans established pursuant to said Section 6 Section 78a, or adopt or established a 78a, or adopt or establish a new or different new or different plan or plans for plan or plans for eligible members of the 7 eligible members of the police or fire police or fire department of the City of San department of the City of San José " ... José, for the purpose of providing benefits 8 "all as the Council may deem proper and for members of any such plan or plans in 9 subject to such conditions, restrictions, excess of those benefits authorized or limitations, terms and other provisions required by the provisions of said Section 10 as the Council may deem proper;..." 89a" ... "all as the Council may deem proper and subject to such conditions, 11 restrictions, limitations, terms and other Supporting Evidence: provisions as the Council may deem proper; 12 provided, however, that: RJN, Exh. E (California 13 Assembly Concurrent (1) The Council shall not decrease any of said Resolution No. 17, adopted in benefits below those which Section 78a 14 Assembly January 18, 1961, makes mandatory, nor otherwise deprive approving amendment of 15 any member of any such plan of any rights Charter of San José to include to which he would be entitled under Section 16 Section 78b ("Discretionary 78a...." Powers of Council Respecting 17 (Emphasis added.) Retirement") of Article X). 18 Supporting Evidence: 19 • City's RJN, Exh. E (California Assembly 20 Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving 21 amendment of Charter of San José to include Section 78b ("Discretionary Powers 22 of Council Respecting Retirement") of Article X). 23 45. The ballot argument in favor of Disputed as incomplete 24 Proposition A stated: 25 "THIS AMENDMENT GIVES The ballot argument in favor of Proposition A DISCRETIONARY POWERS TO THE 26 also says: CITY COUNCIL! It is good YOUR POLICE AN FIREMEN NEED government to allow the City Council to 27 PROPOSITION A! Proposition A was placed on be responsible for investigating 28 the ballot by the City Council at the request of the problems and deciding how to solve CASE NO. 1-12-CV-225926 204

SEPARATE STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."	members of your police and fire departments. The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not have Social Security or any other survivor
	Supporting Evidence:	benefits of any kind. Almost all other cities provide survivor benefits.
	 RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of 	SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable
	San José , April 12, 1960, including "Argument in Favor	survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.
	of Proposition A").	NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT!
		One reason is that the City Council should have broad powers to investigate and decide on matters
		just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions."
		(Emphasis added.)
		Supporting Evidence:
		City's RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Floriers of the City of Same
	submitted to the Electors of the City of San José, April 12, 1960, including "Argument in Favor of Proposition A").	
46.	As adopted by the voters in 1965, the San José City Charter states at Section	Undisputed
1500: Except as hereinafter otherwise provided, the Council shall provide, hy ordinance or ordinances, for the creation, establishment and maintenance of a		
	retirement plan or plans for all officers and employees of the City. Such plan or	
	plans need not be the same for all officers and employees. Subject to other	

1 2	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence	
3 4 5 6	may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."		
7	Supporting Evidence:		
8 9	RJN, Exh. G (1965 Charter) (emphasis added).		
10	47. As adopted by the voters in 1965, the	Disputed as incomplete	
11	San José City Charter states at Section 1503:	* The Title of Section 1503 is: "Continuance of Existing Retirement Systems"	
12	Any and all retirement system or systems, existing upon adoption of this	(Emphasis added)	
13	Charter, for the retirement of officers or	* It reads, in its entirety:	
14 15	employees of the City, adopted under any law or color of any law, including but not limited to those retirement	Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement	
16	systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José	of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established	
17	validated and declared legally effective	by Parts 1, 2 and 4 of Chapter 9 of Article 11 of the	
18	and shall continue until otherwise	San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall	
19	subject to other provisions of this	continue until otherwise provided by ordinance. The foregoing provisions of this Section shall	
20	have the power and right to repeal or	operate to supply such authorization as may be necessary to validate any such retirement system	
22	systems, and to adopt or establish a new	or systems which could have been supplied in the Charter of the City of San Jose or by the people of	
23	officers or employees, it being the intent	the City at the time of adoption or amendment of any such retirement system or systems. However,	
24	shall prevail over the provisions of this	subject to other provisions of this Article, the Council shall at all times have the power and right	
25	Section.	to repeal or amend any such retirement system or systems, and to adopt or establish a new or	
26	Supporting Evidence	different plan or plans for all or any officers or	
27	• RJN, Exh. G (1965 Charter).	employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.	
[]	1		

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
		(Emphasis added)
		Supporting Evidence:
		City's RJN, Exh. G (1965 Charter)
48.	Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."	Undisputed
	Supporting Evidence:	
	• RJN, Exh. A.	
49.	City Charter section 602 states: "The	Undisputed (although this is not the entirety
	following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."	Section 602)
	ordinance.	
-	Supporting Evidence:	
	RJN, Exh. A	
50.	City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation,	Objection: irrelevant; asked and answered (substance of Section 1500 addressed in previous paragraph)
	establishment and maintenance of a retirement plan or plans for all officers	
	and employees of the City."	
	Supporting Evidence:	•
	• RJN, Exh. A	
51.	The City Council has enacted some	Disputed: as is relevant to AFSMCE's case,
	ordinances implementing Measure B.	City Council has only amended the Municipal Code to remove the SRBR.
	Supporting Evidence:	Supporting Evidence:
	• Gurza Decl, Exhs. 54, 55	• Gurza Dcc., Exhs. 54 7 CASE NO. 1-12-CV-2:

Subject of the subjec	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	(Federated, Police and Fire Ordinances).	• Allen Dec., ¶21
52.	For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." Supporting Evidence: • RJN, Exh. C.	Disputed as incomplete Full text: "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, as survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons." (Emphasis added.)
		Supporting Evidence:
		• City's RJN, Exh. C
53.	Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.	Disputed: cited sources only demonstrate suspended distributions in fiscal years 201 2011 (City RJN, Exh. L) and 2012-2013 (City RJN, Exh. M)
	Supporting Evidence:	
	• RJN., Exhs. L, M, N	
54.	For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"	Objection: irrelevant and unduly prejudicial Objections to evidence 24

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Supporting Evidence:	
• RJN., Exh. D.	
55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moncys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund." Supporting Evidence: • RJN., Exh. N.	Objection: irrelevant and unduly prejudicial Objections to evidence 25
56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide	Objection: irrelevant and unduly prejudicial Objections to evidence 24
that "there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013" (Municipal Code section 3.36.580(D)(2)	Sojections to evidence 24
Supporting Evidence:	
• RJN., Exh. D.	
57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.	Undisputed as to Federated City Employees Retirement System
Supporting Evidence:	
 RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth & England, to Edward 	
F. Overton, Retirement and Benefits Administrator, re:	
SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation	
Report, City of San José Police and Fire Department Retirement	
20	09 CASE NO. 1-12-CV-22

	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)	
58.	In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.	Undisputed as to Federated City Employees Retirement System
	Supporting Evidence:	
	• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6, Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
59.	In 2011, and 2012, the actuaries reported that the City's two pension funds had "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR.	Undisputed as to Federated City Employees Retirement System
	Supporting Evidence: ● Gurza Dec., Exhs. 44, 45, 46, 47, 48.	
Dated	d: April 30, 2013	BEESON, TAYER & BODINE, APC
		By://// // // // // // // // // // /
		VISHTASP M. SOROUSHIAN Attornevs for AFSCME LOCAL 101
		AMOING A ROLL BOOKE DOCAL TOT
		·

UPS Internet Shipping: View/Print Label

- 1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- 2. Fold the printed sheet containing the label at the line so that the entire shipping label is visible. Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
- 3. GETTING YOUR SHIPMENT TO UPS

UPS locations include the UPS Store[®], UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.

Schedule a same day or future day Pickup to have a UPS driver pickup all of your Internet Shipping packages.

Hand the package to any UPS driver in your area.

Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the 'Find Locations' Quick link at ups.com.

Customers with a Daily Pickup

Your driver will pickup your shipment(s) as usual.

FOLD HERE

